

# EXHIBIT C

CONFIDENTIAL

Page 1

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3                                 - - -  
4       JOHN DOE,                                 :  
5                                 Plaintiff,                                 :  
6                                 vs.                                 :  
7       ST. JOSEPH'S UNIVERSITY                 :  
8                                 and                                 :  
9       JANE ROE,                                 :  
10                                 Defendants.                                 : NO. 18-2044

11                                 - - -  
12                                 FRIDAY, JULY 6, 2018  
13                                 - - -

14                                 CONFIDENTIAL  
15                                 - - -

16               Videotaped deposition of WILLIAM  
17       BORDAK, taken at the law offices of  
18       Schwabland and Ryan, PC, 955 Old Eagle  
19       School Road, Suite 306, Wayne, Pennsylvania,  
20       commencing at 10:11 a.m., before Kimberly A.  
21       Wornczyk, a Registered Professional Reporter,  
22       New Jersey Certified Court Reporter  
23       (Certificate No. 30X100223500), and Notary  
24       Public in and for the Commonwealth of  
      Pennsylvania.

22                                 - - -  
23                                 VERITEXT LEGAL SOLUTIONS  
24                                 MID-ATLANTIC REGION  
                              1801 Market Street - Suite 1800  
                              Philadelphia, Pennsylvania 19103

## CONFIDENTIAL

<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 SCHWABENLAND AND RYAN, PC</p> <p>4 BY: EDWARD J. SCHWABENLAND, ESQUIRE</p> <p>5 955 Old Eagle School Road</p> <p>6 Suite 306</p> <p>7 Wayne, Pennsylvania 19087</p> <p>8 610-971-9200</p> <p>9 eschwab@sandrlaw.com</p> <p>10 Representing the Plaintiff, John Doe</p> <p>11</p> <p>12 LAW OFFICES OF JOHN MIRABELLA</p> <p>13 BY: JOHN MIRABELLA, ESQUIRE</p> <p>14 1600 Market Street</p> <p>15 Suite 1810</p> <p>16 Philadelphia, Pennsylvania 19103</p> <p>17 215-422-4991</p> <p>18 Representing the Plaintiff, John Doe</p> <p>19</p> <p>20 MINTZER SAROWITZ ZERIS LEDVA &amp;</p> <p>21 MEYERS, LLP</p> <p>22 BY: HOLLY MCREYNOLDS, ESQUIRE</p> <p>23 1500 Market Street</p> <p>24 Suite 4100</p> <p>Philadelphia, Pennsylvania 19102</p> <p>215-735-7200</p> <p>hreynolds@defensecounsel.com</p> <p>Representing the Defendant, Jane Roe</p> <p>20</p> <p>21 MONTGOMERY MCCracken</p> <p>22 BY: ALBERT L. PICCERILLI, ESQUIRE</p> <p>23 1735 Market Street</p> <p>24 Philadelphia, Pennsylvania 19103</p> <p>215-772-7590</p> <p>apiccerilli@mmwr.com</p> <p>Representing the Defendant, St.</p> <p>Joseph's University</p>	<p>Page 4</p> <p>1 INDEX</p> <p>2 ---</p> <p>3 WITNESS PAGE</p> <p>4 WILLIAM BORDAK</p> <p>5 By Mr. Schwabenland 5</p> <p>6</p> <p>7 TELEPHONE CONFERENCE WITH JUDGE DIAMOND 172</p> <p>8</p> <p>9 ---</p> <p>10 EXHIBITS</p> <p>11</p> <p>12 ---</p> <p>13 NUMBER DESCRIPTION PAGE</p> <p>14 1 Respondents in sexual 151</p> <p>15 misconduct (ISMP/SMP),</p> <p>16 SJU001331 through 001334</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>Page 3</p> <p>1 ALSO PRESENT:</p> <p>2 Marianne Schimelfenig, Esquire</p> <p>3 (St. Joseph's University)</p> <p>4</p> <p>5 Rick Kanzinger, Jr., Videographer</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 5</p> <p>1 DEPOSITION SUPPORT INDEX</p> <p>2 ---</p> <p>3 INSTRUCTION NOT TO ANSWER:</p> <p>4 Page Line</p> <p>5 165 17</p> <p>6</p> <p>7</p> <p>8 REQUEST FOR PRODUCTION OF DOCUMENTS:</p> <p>9 Page Line Description</p> <p>10 (None)</p> <p>11</p> <p>12</p> <p>13 STIPULATIONS:</p> <p>14 Page Line</p> <p>15 6 1</p> <p>16</p> <p>17 QUESTIONS MARKED:</p> <p>18 Page Line</p> <p>19 (None)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 6</p> <p>1 (It is agreed by and among 2 counsel for the respective parties 3 that the sealing, filing, and 4 certification are hereby waived, and 5 that all objections, except as to the 6 form of the question, be reserved 7 until the time of trial.) 8 - - - 9 MR. PICCERILLI: Counsel for 10 plaintiff and I, as counsel for St. 11 Joe's University, and counsel for Jane 12 Roe stipulate that all objections, 13 except as to the form of the question, 14 are reserved until the time of trial 15 and, also, we don't waive 16 certification and the witness reserves 17 the right to read and sign. Now, on 18 objections, you want to go off the 19 video record even for form of the 20 question or how do you want to do 21 this? 22 MR. SCHWABENLAND: Well, if 23 you're going to object to the form and 24 it's a simple statement, "I object to</p>	<p style="text-align: right;">Page 8</p> <p>1 deposition. My name is Rick 2 Kanzinger, Jr. and I am with J.C. 3 Video Productions. This deposition is 4 being taken on Friday, July 6, 2018. 5 The time is 10:13 a.m. We're located 6 at 955 Old Eagle School Road, Suite 7 306, in Wayne, Pennsylvania. Today's 8 case is John Doe versus St. Joseph's 9 University and Jane Roe, Case Number 10 18-2004, filed in the United States 11 District Court for the Eastern 12 District of Pennsylvania. Present for 13 the taking of this videotape 14 deposition are the witness, William 15 Bordak. All counsel will be denoted 16 on the stenographic record. The court 17 reporter is Kimberly Wornczyk of 18 Veritext Legal Solutions. Will the 19 court reporter please swear in the 20 witness. 21 - - - 22 WILLIAM BORDAK, having been 23 duly sworn, was examined and testified 24 under oath as follows:</p>
<p style="text-align: right;">Page 7</p> <p>1 the form," you don't have to go off. 2 If you want to -- 3 MR. PICCERILLI: If it is going 4 to be more extended, we'll go off and 5 we'll just be on the transcript. 6 MR. SCHWABENLAND: If you want 7 to put reasons, then we'll go off 8 camera. Just say, "Let's go off 9 camera." Before we begin, we should 10 reemphasize again, as we've done in 11 all these depositions, that all 12 counsel have agreed to maintain the 13 confidentiality of these depositions 14 and this deposition and the court has 15 approved an order maintaining 16 confidentiality. That applies not 17 only to the testimony but to any 18 exhibits and the contents of those 19 exhibits that will be used. So we 20 just have to have each deposition 21 reflect that. That's it. Do you want 22 to say anything else? 23 THE VIDEOGRAPHER: On the 24 record. The following is a videotape</p>	<p style="text-align: right;">Page 9</p> <p>1 - - - 2 EXAMINATION 3 - - - 4 BY MR. SCHWABENLAND: 5 Q. Could you state your full name 6 for the record? 7 A. Sure. William Steven Bordak. 8 Q. Mr. Bordak, my name is Ed 9 Schwabenland. We met not too long ago, but we 10 are meeting again today. I will be asking you 11 questions. Have you ever given a deposition 12 before? 13 A. No. 14 Q. Okay. Let me just give you a 15 couple of guidelines if we could. If I ask 16 you a question that doesn't make sense in some 17 way, let me know and I'll try to rephrase it. 18 Fair enough? 19 A. Fair. 20 Q. I only want you to answer the 21 question if you feel you understood it and if 22 you answer the question I will assume that 23 you're answering truthfully, to the best of 24 your ability. Is that acceptable?</p>

3 (Pages 6 - 9)

## CONFIDENTIAL

<p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. I'll also ask you to do the</p> <p>3 very thing you've been doing, waiting for me</p> <p>4 to either get done making a statement or</p> <p>5 asking a question and then you respond</p> <p>6 verbally. So if one person talks at a time it</p> <p>7 makes this young lady's life a lot easier.</p> <p>8 Okay?</p> <p>9 A. Understood.</p> <p>10 Q. Finally, this is a deposition,</p> <p>11 so if you need to take a break, stretch your</p> <p>12 legs for whatever reason, then feel free to</p> <p>13 exercise those options. Don't feel you have</p> <p>14 to sit there the whole time. Okay? We'll</p> <p>15 take breaks as we go along here. Do you have</p> <p>16 any questions before I begin asking you?</p> <p>17 A. May I have a glass of water</p> <p>18 before we begin?</p> <p>19 Q. Sure.</p> <p>20 MR. SCHWABENLAND: Let's go off</p> <p>21 camera for a second.</p> <p>22 THE VIDEOGRAPHER: Off the</p> <p>23 record, 10:16.</p> <p>24</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. And did you go to -- did you go</p> <p>2 on for other schooling or work or both?</p> <p>3 A. Both.</p> <p>4 Q. Okay. And so what was the next</p> <p>5 thing you did after Siena?</p> <p>6 A. I went to graduate school.</p> <p>7 Q. And graduate school where?</p> <p>8 A. Fairfield University.</p> <p>9 Q. And what years were you at</p> <p>10 Fairfield?</p> <p>11 A. 2003 to 2005.</p> <p>12 Q. And what did you -- I take it</p> <p>13 you pursued a master's degree?</p> <p>14 A. Correct.</p> <p>15 Q. And master's in what?</p> <p>16 A. Industrial organizational</p> <p>17 psychology.</p> <p>18 Q. I'm sorry. Say that again.</p> <p>19 A. Industrial organizational</p> <p>20 psychology.</p> <p>21 Q. Okay. And just basically, what</p> <p>22 is that?</p> <p>23 A. It's organizational psychology.</p> <p>24 Q. Pertaining to businesses?</p>
<p style="text-align: right;">Page 11</p> <p>1 (Off the record)</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Back on the</p> <p>4 record, 10:16.</p> <p>5 BY MR. SCHWABENLAND:</p> <p>6 Q. Okay. Let me ask you some</p> <p>7 questions about your background, if I could.</p> <p>8 What is your present age?</p> <p>9 A. Thirty-six.</p> <p>10 Q. Okay. And where did you</p> <p>11 originally grow up?</p> <p>12 A. Connecticut.</p> <p>13 Q. And did you go to high school</p> <p>14 in Connecticut?</p> <p>15 A. Yes.</p> <p>16 Q. Where did you do your</p> <p>17 undergrad?</p> <p>18 A. Siena College.</p> <p>19 Q. Where is that located?</p> <p>20 A. Loudonville, New York.</p> <p>21 Q. And what year did you graduate?</p> <p>22 A. 2003.</p> <p>23 Q. And what was your major?</p> <p>24 A. Psychology.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Businesses, nonprofits,</p> <p>2 education.</p> <p>3 Q. Okay. And did you also work</p> <p>4 there at school?</p> <p>5 A. Yes.</p> <p>6 Q. And in what capacity?</p> <p>7 A. I was a graduate assistant in</p> <p>8 the student activities office.</p> <p>9 Q. And what were your duties as a</p> <p>10 graduate assistant?</p> <p>11 A. I advised student groups,</p> <p>12 mostly programming groups, advised the student</p> <p>13 senate, worked with orientation, varied sort</p> <p>14 of activities-related things, evening</p> <p>15 programs, late night programs, weekend</p> <p>16 programming.</p> <p>17 Q. Did you do anything with</p> <p>18 handling of discipline cases involving</p> <p>19 students?</p> <p>20 A. No.</p> <p>21 Q. Did you do anything -- I think</p> <p>22 I know the answer. Did you do anything with</p> <p>23 regard to taking courses or anything on Title</p> <p>24 IX issues?</p>

4 (Pages 10 - 13)

## CONFIDENTIAL

<p style="text-align: right;">Page 14</p> <p>1 A. No.</p> <p>2 Q. After Fairfield where did you</p> <p>3 go?</p> <p>4 A. I went back to Siena College</p> <p>5 and worked professionally.</p> <p>6 Q. And how long were you working</p> <p>7 at Siena College?</p> <p>8 A. For three years.</p> <p>9 Q. And in what capacity?</p> <p>10 A. I worked in the office of</p> <p>11 residence life and the office of campus</p> <p>12 programs.</p> <p>13 Q. And what was the last one?</p> <p>14 A. Office of campus programs.</p> <p>15 Q. And what year were you there?</p> <p>16 A. 2005 to 2008.</p> <p>17 Q. Did you have a title?</p> <p>18 A. I was a residence director. I</p> <p>19 was in two different positions during that</p> <p>20 three years. I was a residence director and</p> <p>21 an assistant director of campus programs.</p> <p>22 Q. Now, when you were residence</p> <p>23 director I take it that was through the office</p> <p>24 of resident life?</p>	<p style="text-align: right;">Page 16</p> <p>1 of conduct that arise within the residents'</p> <p>2 area involving the students that lived in that</p> <p>3 area.</p> <p>4 Q. Now, you indicated that -- it</p> <p>5 said violation of student code of conduct that</p> <p>6 arises in the resident area?</p> <p>7 A. Right. I was responsible for</p> <p>8 the students in that area and so the</p> <p>9 violations of policy that took place or</p> <p>10 involved the students in that area.</p> <p>11 Q. Okay. But if the violation</p> <p>12 took place in another part of campus or just</p> <p>13 off campus, would you still be involved in</p> <p>14 those cases if the resident lived in that</p> <p>15 area?</p> <p>16 A. It would be up to the dean of</p> <p>17 students to assign the case, but, generally</p> <p>18 speaking, yes.</p> <p>19 Q. Okay. Now, the types of cases</p> <p>20 you were involved with, are you able to tell</p> <p>21 me -- some are more serious than others -- are</p> <p>22 you able to tell me what type of cases you</p> <p>23 were involved with?</p> <p>24 MR. PICCERILLI: Objection to</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yes.</p> <p>2 Q. And when you became assistant</p> <p>3 director of campus programs that was through</p> <p>4 campus programming, I imagine?</p> <p>5 A. Correct.</p> <p>6 Q. So how long were you a</p> <p>7 residence director, then, if you can</p> <p>8 approximate for me?</p> <p>9 A. Two and a half of those three</p> <p>10 years.</p> <p>11 Q. Okay. What were your roles and</p> <p>12 duties as a residence director, then?</p> <p>13 A. I was the master's level</p> <p>14 professional staff member in charge of a</p> <p>15 residential community, so a residence hall or</p> <p>16 area in which residential on-campus students</p> <p>17 lived.</p> <p>18 Q. As part of your duties did that</p> <p>19 entail handling or being involved with</p> <p>20 disciplinary matters?</p> <p>21 A. Yes.</p> <p>22 Q. What type of disciplinary</p> <p>23 matters were you involved with?</p> <p>24 A. Violations of the student code</p>	<p style="text-align: right;">Page 17</p> <p>1 form.</p> <p>2 THE WITNESS: So I was a</p> <p>3 residence director and so -- there was</p> <p>4 a residence director in the dean of</p> <p>5 students office and so the dean of</p> <p>6 students office handled the more</p> <p>7 serious cases, those that could impact</p> <p>8 the student's status at the</p> <p>9 institution. So, generally, it was</p> <p>10 lower level, although not truly low</p> <p>11 level. They were more serious cases,</p> <p>12 alcohol or drug cases, noise</p> <p>13 violations, community impact, major</p> <p>14 personal conflicts, those things.</p> <p>15 BY MR. SCHWABENLAND:</p> <p>16 Q. If the cases involved or might</p> <p>17 cause a student to either be expelled or</p> <p>18 suspended, would that be considered, like, a</p> <p>19 more serious case?</p> <p>20 A. It would.</p> <p>21 Q. And you would not have handled</p> <p>22 them then?</p> <p>23 A. Not at that time, no.</p> <p>24 Q. And did you handle any assault</p>

5 (Pages 14 - 17)

## CONFIDENTIAL

<p style="text-align: right;">Page 18</p> <p>1 cases when you were there that you can recall?</p> <p>2 A. Not that I can recall.</p> <p>3 Q. And did you handle any sexual</p> <p>4 assault cases?</p> <p>5 A. No.</p> <p>6 Q. When you say handle -- well,</p> <p>7 I'm sorry. I've been saying handling them.</p> <p>8 I'm not sure if that's the correct</p> <p>9 terminology. What role would you play in</p> <p>10 these types of -- in the cases that you did --</p> <p>11 you were involved with there?</p> <p>12 A. I was the hearing officer and</p> <p>13 so I met with the students and determined an</p> <p>14 outcome of a violation.</p> <p>15 Q. Okay. And I take it sometimes</p> <p>16 you could work out an agreement and at other</p> <p>17 times a hearing would have to be had and then</p> <p>18 you'd have to make your own determination?</p> <p>19 MR. PICCERILLI: Object to</p> <p>20 form.</p> <p>21 THE WITNESS: They were all</p> <p>22 hearings. There was no agreements</p> <p>23 beforehand.</p> <p>24</p>	<p style="text-align: right;">Page 20</p> <p>1 campus programs. The institution at that time</p> <p>2 had a combined position. Those positions</p> <p>3 resplit and I stayed with the campus programs.</p> <p>4 That was very similar to my graduate work, in</p> <p>5 providing programming opportunities on campus,</p> <p>6 advising student clubs, advising the senior</p> <p>7 class counsel.</p> <p>8 Q. Okay. And so could you explain</p> <p>9 that in a little bit more detail? What do you</p> <p>10 advise them on?</p> <p>11 A. The planning of events, working</p> <p>12 with student groups that maybe want to plan an</p> <p>13 evening program of -- we had a series called</p> <p>14 Late Night Sarazen, which was our student</p> <p>15 union -- and so working with the students to</p> <p>16 develop ideas and contracting and budgeting</p> <p>17 and marketing of the events.</p> <p>18 Q. Okay. In that role, I take it</p> <p>19 you were not working or you were not involved</p> <p>20 with the disciplining of any students?</p> <p>21 A. Correct. I was not.</p> <p>22 Q. Were you involved in any</p> <p>23 educational programs involving violations of</p> <p>24 student conduct?</p>
<p style="text-align: right;">Page 19</p> <p>1 BY MR. SCHWABENLAND:</p> <p>2 Q. And would you also be the</p> <p>3 person, as a hearing officer, to impose the --</p> <p>4 I call them sanctions. Would you also make</p> <p>5 that decision too in that role?</p> <p>6 A. Yes.</p> <p>7 Q. Would you have -- would your</p> <p>8 decision have been reviewed by anybody above</p> <p>9 you, then?</p> <p>10 A. My recollection is reviewed by</p> <p>11 the dean of students office for process</p> <p>12 appropriateness, but not for outcome.</p> <p>13 Q. Okay. Now, after -- I take it,</p> <p>14 then, towards the latter part of your stay at</p> <p>15 Siena College you changed from being a</p> <p>16 residence director to associate director of</p> <p>17 campus program? Did I say that correct?</p> <p>18 A. Assistant director.</p> <p>19 Q. Assistant director. I'm sorry.</p> <p>20 So what did that role entail?</p> <p>21 A. That was -- so my third year --</p> <p>22 so the first semester of my third year I was</p> <p>23 in a split position, where I was both a</p> <p>24 residence director and assistant director of</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Can you repeat or rephrase?</p> <p>2 Q. Sure. If a student violates --</p> <p>3 I'm sorry. There is a code of student conduct</p> <p>4 for the students, right?</p> <p>5 A. Yes.</p> <p>6 Q. And if a student violates that,</p> <p>7 as you say, when you were residence director</p> <p>8 you would be involved sometimes as the hearing</p> <p>9 officer, right?</p> <p>10 A. Yes.</p> <p>11 Q. Now, when you became the</p> <p>12 assistant director of campus program, you</p> <p>13 weren't involved anymore in the disciplining</p> <p>14 of students should they be charged with</p> <p>15 breaking the student code?</p> <p>16 A. Correct.</p> <p>17 Q. But were you involved in any</p> <p>18 way in educating groups throughout the campus</p> <p>19 about issues concerning either sexual assault,</p> <p>20 assaults, or violating student code?</p> <p>21 A. I can't recall with any</p> <p>22 specificity.</p> <p>23 Q. Okay. Did you pursue any other</p> <p>24 schooling while you were there?</p>

6 (Pages 18 - 21)



## CONFIDENTIAL

<p style="text-align: right;">Page 22</p> <p>1 A. While I was at Siena?</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. And so when you left Siena</p> <p>5 College in 2008, where did you go?</p> <p>6 A. St. Joseph's.</p> <p>7 Q. And you joined them in what</p> <p>8 capacity?</p> <p>9 A. Coordinator of community</p> <p>10 standards.</p> <p>11 Q. I'm sorry?</p> <p>12 A. Coordinator of community</p> <p>13 standards.</p> <p>14 Q. Okay. We'll get into what</p> <p>15 community standards is or what the purpose of</p> <p>16 it is, but it's my understanding since joining</p> <p>17 them -- what, in 2008?</p> <p>18 A. Right.</p> <p>19 Q. -- you have been with St. Joe's</p> <p>20 University up to the present, right?</p> <p>21 A. Correct.</p> <p>22 Q. And you have been associated</p> <p>23 with the office of community standards since</p> <p>24 joining St. Joe's University?</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Associate director.</p> <p>2 Q. And how long were you associate</p> <p>3 director?</p> <p>4 A. Approximately a year.</p> <p>5 Q. Okay. And that was changed,</p> <p>6 what, to director?</p> <p>7 A. I served in an interim director</p> <p>8 capacity for about five months.</p> <p>9 Q. Okay.</p> <p>10 A. And then a director.</p> <p>11 Q. And when did you assume the</p> <p>12 interim directorship?</p> <p>13 A. I believe it's about five years</p> <p>14 ago.</p> <p>15 Q. So at least by 2013 you would</p> <p>16 have been acting in a capacity of either an</p> <p>17 interim director and then later on as</p> <p>18 director, right?</p> <p>19 A. I believe so. I believe that</p> <p>20 2013 is correct.</p> <p>21 Q. Okay. And, again, I am not</p> <p>22 going to hold you to the exact date.</p> <p>23 A. Thank you.</p> <p>24 Q. Tell me, if you could, let's --</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Yes.</p> <p>2 Q. But your title has changed</p> <p>3 along with, I take it, your responsibilities?</p> <p>4 A. Yes.</p> <p>5 Q. Now, how long -- if I can, how</p> <p>6 long were you a coordinator of community</p> <p>7 standards?</p> <p>8 A. I can't recall specifically. I</p> <p>9 think a year, but --</p> <p>10 Q. Okay.</p> <p>11 A. -- I don't know the specific</p> <p>12 time.</p> <p>13 Q. I am not going to hold you to</p> <p>14 an exact date. So that's an approximation?</p> <p>15 A. Approximation of a year.</p> <p>16 Q. And so then what title did you</p> <p>17 assume then?</p> <p>18 A. Assistant director.</p> <p>19 Q. And how long did you stay</p> <p>20 assistant director, if you know?</p> <p>21 A. Approximately, again, three</p> <p>22 years.</p> <p>23 Q. And then your title was changed</p> <p>24 to what?</p>	<p style="text-align: right;">Page 25</p> <p>1 I want to get to your duties as a director,</p> <p>2 but I would like to work up to that. Tell me</p> <p>3 what your duties were as coordinator and then</p> <p>4 we'll go through each one, if they changed</p> <p>5 much. So coordinator, when you first joined</p> <p>6 them?</p> <p>7 A. It's what the title would</p> <p>8 suggest. I coordinated the operations of the</p> <p>9 office. It was much more administrative. It</p> <p>10 was kind of report, reviewing case</p> <p>11 assignments, working with the hearing officers</p> <p>12 across campus for procedural issues. I was a</p> <p>13 hearing officer, I did meet with students, but</p> <p>14 the primary function was coordination.</p> <p>15 Q. When you assumed the role of</p> <p>16 assistant director, how did your duties</p> <p>17 change?</p> <p>18 A. To my recollection, my duties</p> <p>19 did not change. The change from coordinator</p> <p>20 to assistant director was that -- human</p> <p>21 resource's decision -- the title changed.</p> <p>22 They were phasing out the title of coordinator</p> <p>23 across campus. So my job responsibilities</p> <p>24 didn't change with that title change.</p>

7 (Pages 22 - 25)



## CONFIDENTIAL

<p style="text-align: right;">Page 26</p> <p>1 Q. So your title was simply</p> <p>2 changed from coordinator to assistant</p> <p>3 director?</p> <p>4 A. Correct.</p> <p>5 Q. How about associate director,</p> <p>6 did your responsibilities change at all?</p> <p>7 A. They did. In that capacity, I</p> <p>8 was seen more and utilized more as a hearing</p> <p>9 officer and less in the administrative</p> <p>10 capacity.</p> <p>11 Q. Okay. And once assuming the</p> <p>12 role of interim director and then director,</p> <p>13 how did your roles change?</p> <p>14 A. I then was director of the</p> <p>15 office, with oversight over the process as</p> <p>16 well as the mission and vision of the office</p> <p>17 on campus.</p> <p>18 Q. And as we talk here, the office</p> <p>19 of community standards, sometimes it might</p> <p>20 be easier if I refer to OCS. Would that be</p> <p>21 acceptable to you?</p> <p>22 A. Yes.</p> <p>23 Q. Well, you mentioned that the --</p> <p>24 oh, we'll come back to that in a second. I</p>	<p style="text-align: right;">Page 28</p> <p>1 the form.</p> <p>2 THE WITNESS: Every case is</p> <p>3 handled differently. You're saying</p> <p>4 the same way --</p> <p>5 BY MR. SCHWABENLAND:</p> <p>6 Q. I am talking about</p> <p>7 procedurally.</p> <p>8 A. Okay.</p> <p>9 Q. Let me articulate this, if I</p> <p>10 could. If a student is charged with violation</p> <p>11 of -- a specific action, he's notified of</p> <p>12 that; is that correct?</p> <p>13 A. Can you repeat that?</p> <p>14 MR. PICCERILLI: Let's go off</p> <p>15 the record.</p> <p>16 THE VIDEOGRAPHER: Off the</p> <p>17 video record, 10:34.</p> <p>18 MR. PICCERILLI: I think when</p> <p>19 you first started your line of</p> <p>20 questioning you were asking him about</p> <p>21 when he started at St. Joe's?</p> <p>22 MR. SCHWABENLAND: Yes.</p> <p>23 MR. PICCERILLI: But now it</p> <p>24 seems that you're focusing when a</p>
<p style="text-align: right;">Page 27</p> <p>1 forgot to ask you this: When you were at</p> <p>2 Siena as a residence director and you were</p> <p>3 handling discipline cases as a hearing</p> <p>4 officer, were all matters, including sexual</p> <p>5 violations, handled the same way at Siena; in</p> <p>6 other words, or was there a separate track in</p> <p>7 existence at Siena then for the handling of</p> <p>8 sexual misconduct cases?</p> <p>9 MR. PICCERILLI: Objection to</p> <p>10 form.</p> <p>11 BY MR. SCHWABENLAND:</p> <p>12 Q. If you want me to repeat it, I</p> <p>13 will.</p> <p>14 A. I don't know the answer.</p> <p>15 Q. Okay.</p> <p>16 A. I don't recall the procedural</p> <p>17 model that was used at Siena at that time.</p> <p>18 Q. Okay. When you first joined</p> <p>19 St. Joe's University working at OCS, were all</p> <p>20 matters involving any type of student --</p> <p>21 violation of a student code, including sexual</p> <p>22 violations, perhaps, were they all handled the</p> <p>23 same way?</p> <p>24 MR. PICCERILLI: Objection to</p>	<p style="text-align: right;">Page 29</p> <p>1 student is as opposed to when a</p> <p>2 student was at that time.</p> <p>3 MR. SCHWABENLAND: I will</p> <p>4 rephrase it.</p> <p>5 MR. PICCERILLI: I just wanted</p> <p>6 to clarify with you --</p> <p>7 MR. SCHWABENLAND: I will</p> <p>8 rephrase it.</p> <p>9 THE VIDEOGRAPHER: We are back</p> <p>10 on the record, 10:35.</p> <p>11 BY MR. SCHWABENLAND:</p> <p>12 Q. We had a discussion off the</p> <p>13 record, so let me try to rephrase the</p> <p>14 question, just so it's clear. I am trying to</p> <p>15 determine, when you first joined St. Joe's</p> <p>16 were all matters of student violations handled</p> <p>17 procedurally through the OCS?</p> <p>18 A. Yes.</p> <p>19 Q. And was there a separate track</p> <p>20 for sexual misconduct allegations or charges?</p> <p>21 A. No.</p> <p>22 Q. And so at some point during</p> <p>23 your stay at St. Joe's or your employment at</p> <p>24 St. Joe's, I take it that St. Joe's instituted</p>

8 (Pages 26 - 29)

## CONFIDENTIAL

<p style="text-align: right;">Page 30</p> <p>1 a separate sexual misconduct policy from the  2 other types of charges that could be handled  3 by community standards; am I correct there?  4 A. I'm not sure I understand the  5 phrasing of it. I want to be sure.  6 Q. Let me rephrase. In the  7 student handbook, the student handbook has  8 down statements about, if there are charges  9 brought against a student the handbook tells  10 you that they would be advised of the charges  11 against them; is that correct?  12 A. Yes.  13 Q. And once you're advised of the  14 charges against you, the student normally -- I  15 am talking about then, before you had a sexual  16 misconduct policy -- the student would then be  17 afforded a hearing before either a hearing  18 officer or a panel of three, something like  19 that?  20 MR. PICCERILLI: Objection to  21 form.  22 THE WITNESS: You're talking  23 about when I first started at St.  24 Joseph's?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. And were you on any committee  2 to make a decision about formulating the  3 sexual misconduct policy?  4 A. No.  5 Q. Did you have any input in the  6 formulation of any sexual misconduct policy?  7 A. Not formally. My supervisor  8 was on the committee and she would share with  9 me kind of some of the conversations, but I  10 did not have a formal line to the committee.  11 It was not part of any decision making.  12 Q. Who was your supervisor?  13 A. Kiersten White.  14 Q. And Ms. White is still there,  15 right?  16 A. Dr. White, yes.  17 Q. Dr. White. And Dr. White is  18 in -- is she with OCS or another?  19 A. She is not technically within  20 the community standards office. I report to  21 her. She is an assistant vice president.  22 Q. And she oversees what besides  23 OCS?  24 A. The technology operations</p>
<p style="text-align: right;">Page 31</p> <p>1 BY MR. SCHWABENLAND:  2 Q. Yes.  3 A. Yes.  4 Q. Okay. And that would be  5 afforded to all students of any type of  6 violation, whether sexual or nonsexual?  7 A. At that time, yes.  8 Q. Okay. And so at some point it  9 changed, right?  10 A. Yes.  11 Q. And it changed while you  12 were -- well, you tell me when it changed.  13 When was the sexual misconduct policy formed?  14 A. The interim sexual misconduct  15 policy took effect in January of 2015.  16 Q. Okay. And then, as I  17 understand it, it was revised in 2017  18 sometime?  19 A. I can't recall the date.  20 Q. Okay. When it became  21 effective -- let me start over again without  22 stuttering. When it became effective you were  23 in the role of a director of OCS?  24 A. Correct.</p>	<p style="text-align: right;">Page 33</p> <p>1 within the division, student health, student  2 outreach and support, counseling center. I  3 may be missing something.  4 Q. And in 2015 she was the person  5 you reported to; is that correct?  6 A. Correct.  7 Q. And she has still been the  8 person you report to up to the present?  9 A. Yes.  10 MR. PICCERILLI: Let him ask  11 the full question, please.  12 THE WITNESS: I apologize.  13 BY MR. SCHWABENLAND:  14 Q. Mr. Anderson was here not too  15 long ago for a deposition. What does he do in  16 relation to what you do? That's a bad  17 question.  18 A. Yeah.  19 Q. Do you do any reporting to  20 Anderson?  21 A. My supervisor reports to Dr.  22 Anderson.  23 Q. Dr. Anderson.  24 A. I report to Dr. White who</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 34</p> <p>1 reports to Dr. Anderson. So there's a layer 2 in between. 3 Q. And so is he responsible in his 4 capacity for the operations of OCS? 5 A. That's a difficult question to 6 answer. He's responsible for all of student 7 life as the vice president of student life. I 8 am responsible for the administrative 9 operation of community standards. 10 Q. And Kiersten White again would 11 be responsible for what? 12 A. Responsible for ensuring that 13 my responsibility in the office of community 14 standards has been met. 15 Q. Okay. But in terms of primary 16 responsibility, that would lie with -- I'm 17 sorry. Primary responsibility for the 18 operation of OCS, that would lie with you, as 19 the director? 20 A. Correct. 21 MR. PICCERILLI: Objection to 22 form. 23 BY MR. SCHWABENLAND: 24 Q. Now, you said that your role as</p>	<p style="text-align: right;">Page 36</p> <p>1 conduct, or does it apply to faculty, staff, 2 and anybody within the university? 3 A. My office is only responsible 4 for student conduct. 5 Q. Okay. What office would be 6 responsible for any misconduct or alleged 7 misconduct on the part of staff or faculty? 8 A. I can't answer that. 9 Q. And the community standards for 10 students would be, again, within -- 11 articulated in the code of conduct in the 12 handbook; is that correct? 13 A. Yes. 14 Q. And it would also be, as of 15 2015, articulated in the sexual misconduct 16 policy? 17 A. Correct. 18 Q. Would community standards 19 include anything else other than the two 20 things I just indicated? 21 A. Well, community standards 22 includes a lot of policies, one of which is 23 the sexual misconduct policy. So it would 24 include various other policies.</p>
<p style="text-align: right;">Page 35</p> <p>1 director, if I understand correctly -- and I'm 2 paraphrasing what I think you just said -- to 3 ensure that the mission and the vision of OCS 4 is properly performed? 5 A. Right. 6 Q. Okay. Tell us now, what does 7 OCS do and what is its mission and vision 8 within the university complex? If that's a 9 complex question, I will be glad to boil it 10 down to one. I just want to know, what does 11 OCS do? 12 A. Right. So we are -- we are 13 very intentional with our name, as the office 14 of community standards, and not student 15 conduct or policy enforcement, because we do a 16 lot more than that. The way we frame it to 17 students is that there are standards for our 18 community that are agreed upon, that are 19 important in sustaining our community. So at 20 its core the office of community standards 21 sustains the community by enforcing the 22 standards for that community. 23 Q. And do those standards apply 24 only to the standards of students, student</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. And can you identify them for 2 me? 3 A. I can't exhaustively. 4 Q. Well, I am not asking for 5 exhaustive. Tell me what you can recall now 6 as you sit here. 7 A. Violation of the alcohol 8 policy, violation of drug policy. Those are 9 the only two that I right now with confidence 10 can give you the policy names without 11 reference. 12 Q. Those policies are articulated, 13 as I understand it, in the student handbook, 14 right? 15 A. Yes. 16 Q. Are there any additional 17 policies that are not articulated in the 18 student handbook that you can recall that 19 would apply? 20 A. Not that I can recall. 21 Q. Okay. Is there a manual at OCS 22 for the handling of misconduct charges? 23 A. What do you mean? Can I ask 24 what you mean by a manual?</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 38</p> <p>1 Q. Sure. There are different 2 people that come in and out of OCS. Is there 3 a manual there that instructs as to how 4 charges should be handled, what are the 5 procedural steps to dealing with this? 6 MR. PICCERILLI: Objection to 7 form. 8 THE WITNESS: The procedural 9 steps are outlined in the handbook. 10 The handbook is our process. So that 11 outlines the process. We do have a 12 manual that speaks more theoretically 13 about how to engage in conversations 14 with students and we use that as a 15 training document and that is a 16 document heavily modeled off of the 17 association of student conduct 18 administration's model manual. 19 BY MR. SCHWABENLAND: 20 Q. Okay. And could you say that 21 again? 22 A. Association of student conduct 23 administration. 24 Q. And is that an outside source?</p>	<p style="text-align: right;">Page 40</p> <p>1 provides the mechanics of our system, what to 2 click and where to save things and so purely 3 from an operational standpoint it provides 4 those guidelines for hearing officers. 5 Q. And is there a name given to 6 this -- I will either call it a manual or a 7 pamphlet, whatever we've been talking about 8 here? 9 A. We call it a manual. 10 Q. Manual? 11 A. Hearing officer manual. 12 Q. Does that manual also apply to 13 now that -- let me start over again. Now that 14 the university has a sexual misconduct policy 15 where -- and it's my understanding that the 16 sexual misconduct policy does not assign a 17 hearing officer to a student's case; am I 18 correct? 19 MR. PICCERILLI: Objection to 20 form. 21 THE WITNESS: We assign an 22 investigator, which is the hearing, 23 and so they are a hearing officer 24 investigator. So same concept, we</p>
<p style="text-align: right;">Page 39</p> <p>1 Is the association of student conduct 2 administration part of the university or is 3 that an outside source? 4 A. That is a professional -- 5 outside source. It's a professional 6 association, nationwide association. 7 Q. You mentioned training in the 8 sense of how to, what, approach students or 9 what? 10 A. How to engage in the 11 conversation when meeting with students. 12 Q. And so this would be within 13 your office? 14 A. Correct. 15 Q. And is it a big book? It's not 16 a multi-volume book or anything like that, I 17 take it? 18 A. No. It's about -- and I would 19 be guessing -- a 20- to 30-page Word document. 20 Q. Other than recalling that it 21 refers to instructing a person from OCS on how 22 to engage with the student, can you recall any 23 other instructions that it provides? 24 A. The appendix of that document</p>	<p style="text-align: right;">Page 41</p> <p>1 assign an investigator. 2 BY MR. SCHWABENLAND: 3 Q. I understand that. So you are 4 saying that the investigator conducts his or 5 her own hearing? 6 A. The investigator conducts the 7 investigation, which is the hearing. 8 Q. Okay. What is your definition 9 of a hearing? I guess I need to know that. 10 MR. PICCERILLI: Objection to 11 the form. 12 THE WITNESS: Where an 13 opportunity for a student to respond, 14 to understand -- to respond to the 15 situation and we do that in an 16 administrative hearing, a board 17 hearing, and an investigative hearing. 18 BY MR. SCHWABENLAND: 19 Q. Let me just pursue that a 20 little bit more, if I could. 21 A. Sure. 22 Q. I am talking about a nonsexual 23 thing, such as assault. An assault can be 24 nonsexual; is that correct?</p>

11 (Pages 38 - 41)

## CONFIDENTIAL

<p style="text-align: right;">Page 42</p> <p>1 A. Correct.</p> <p>2 Q. So if it is nonsexual it</p> <p>3 doesn't fall within the sexual misconduct</p> <p>4 policy, right?</p> <p>5 A. Right.</p> <p>6 Q. And if an assault took place on</p> <p>7 campus where one student is accusing another</p> <p>8 student of, I will say, beating him up, that</p> <p>9 happens on occasions, right?</p> <p>10 A. Yes.</p> <p>11 Q. The student being charged, I</p> <p>12 will call him the -- he would be called the</p> <p>13 respondent; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And the student making the</p> <p>16 claim against the respondent would be the</p> <p>17 complainant, right?</p> <p>18 A. Yes.</p> <p>19 Q. And would both receive notice</p> <p>20 of the charge of assault against the</p> <p>21 respondent?</p> <p>22 A. Yes.</p> <p>23 Q. And would that identify --</p> <p>24 would that -- I will call it a charge letter.</p>	<p style="text-align: right;">Page 44</p> <p>1 exclusively. If we saw an incident as</p> <p>2 more serious, because of the nature of</p> <p>3 that we might schedule a prehearing</p> <p>4 meeting as well.</p> <p>5 BY MR. SCHWABENLAND:</p> <p>6 Q. If it's a drinking charge for</p> <p>7 beer or maybe smoking marijuana, that would</p> <p>8 not be in the serious category, I take it?</p> <p>9 That by itself would not place it in the</p> <p>10 serious category?</p> <p>11 MR. PICCERILLI: Objection to</p> <p>12 form.</p> <p>13 THE WITNESS: If a student had</p> <p>14 a concerning disciplinary history, it</p> <p>15 may.</p> <p>16 BY MR. SCHWABENLAND:</p> <p>17 Q. I'm sorry?</p> <p>18 A. If a student had a concerning</p> <p>19 disciplinary history, it may. If we are</p> <p>20 talking about the first alcohol violation or</p> <p>21 are we talking about the sixth alcohol</p> <p>22 violation? The sixth, we might treat that as</p> <p>23 more serious of an isolation, though, in the</p> <p>24 context of a disciplinary history maybe.</p>
<p style="text-align: right;">Page 43</p> <p>1 Would that --</p> <p>2 A. Charge notice, charge letter.</p> <p>3 Q. A charge notice would be issued</p> <p>4 from OCS, right?</p> <p>5 A. Yes.</p> <p>6 Q. And the student would be</p> <p>7 told -- I'm sorry. Would be that charge</p> <p>8 notice, since this deals with an assault,</p> <p>9 advise of some type of prehearing meeting?</p> <p>10 A. It would depend. That's not an</p> <p>11 automatic. In the handbook we say that for</p> <p>12 more serious cases a prehearing meeting shall</p> <p>13 be scheduled and so if we saw it as a more</p> <p>14 serious incident we would schedule a</p> <p>15 prehearing meeting.</p> <p>16 Q. And the more serious incident</p> <p>17 would be things -- charges or violations that</p> <p>18 would subject to -- a respondent, if found to</p> <p>19 be responsible, subject that respondent to</p> <p>20 either suspension, termination, or, you know,</p> <p>21 suspension or termination?</p> <p>22 MR. PICCERILLI: Objection to</p> <p>23 form.</p> <p>24 THE WITNESS: Yes. Not</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Well, let's assume it's the</p> <p>2 first or the second in that type of context.</p> <p>3 Normally, you wouldn't schedule a prehearing</p> <p>4 meeting with him?</p> <p>5 A. Right.</p> <p>6 Q. So let's talk, if it's a</p> <p>7 serious thing would a prehearing meeting be</p> <p>8 scheduled?</p> <p>9 A. Yes.</p> <p>10 Q. What would be the purpose of a</p> <p>11 prehearing meeting?</p> <p>12 A. To discuss the process and so</p> <p>13 that the student understood fully the process</p> <p>14 before entering that hearing.</p> <p>15 Q. Okay. And the process -- is</p> <p>16 there a form that the student -- that is</p> <p>17 reviewed with the student in discussing the</p> <p>18 process and you ask the student to sign off on</p> <p>19 a checklist?</p> <p>20 A. Yes.</p> <p>21 Q. And there's also a checklist</p> <p>22 used for -- in a context of an alleged</p> <p>23 violation of sexual misconduct policy; is that</p> <p>24 correct?</p>

12 (Pages 42 - 45)



## CONFIDENTIAL

<p style="text-align: right;">Page 46</p> <p>1 A. Yes.</p> <p>2 Q. Is the checklist in a nonsexual</p> <p>3 but serious offense similar to the type of</p> <p>4 checklist that is used in a sexual misconduct</p> <p>5 policy?</p> <p>6 MR. PICCERILLI: Objection to</p> <p>7 form.</p> <p>8 THE WITNESS: It is similar in</p> <p>9 the purpose, but the language is</p> <p>10 different, because the sexual</p> <p>11 misconduct policy form for the</p> <p>12 pre-investigation meetings pulls</p> <p>13 language from the sexual misconduct</p> <p>14 policy.</p> <p>15 BY MR. SCHWABENLAND:</p> <p>16 Q. And they talk about an</p> <p>17 investigator in that policy?</p> <p>18 A. Right.</p> <p>19 Q. But does the form -- again, in</p> <p>20 a nonsexual context of a fairly serious</p> <p>21 offense like an assault, would that talk about</p> <p>22 the scheduling of a hearing before a hearing</p> <p>23 officer?</p> <p>24 A. Yes. It would talk about the</p>	<p style="text-align: right;">Page 48</p> <p>1 for both nonsexual as well as sexual matters?</p> <p>2 A. Yes.</p> <p>3 Q. So -- and I forgot to ask you</p> <p>4 this. Today -- I am jumping forward here. I</p> <p>5 will try to keep it clear. In 2018, I</p> <p>6 understand that you were the director -- I'm</p> <p>7 sorry -- for the school year 2017 into 2018,</p> <p>8 which just ended in May of this year?</p> <p>9 A. Right.</p> <p>10 Q. You're the director of OCS,</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. It's my understanding that</p> <p>14 Emily Forte was with OCS but she just</p> <p>15 transferred over to someplace else.</p> <p>16 A. Yes.</p> <p>17 Q. So did she remain with OCS up</p> <p>18 until the end of the school year?</p> <p>19 A. No.</p> <p>20 Q. Did she switch over to another</p> <p>21 job assignment or office sometime in April of</p> <p>22 2018?</p> <p>23 A. I don't recall the date, but</p> <p>24 April sounds right.</p>
<p style="text-align: right;">Page 47</p> <p>1 process for that alleged conduct.</p> <p>2 Q. And would you, in addition to</p> <p>3 advising that student -- and, again, I'm just</p> <p>4 in the context of a nonsexual serious offense</p> <p>5 and dealing with the process -- in addition to</p> <p>6 advising the student of the specific charge</p> <p>7 against him or her, what that student can do</p> <p>8 to prepare for the hearing?</p> <p>9 MR. PICCERILLI: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: I can't recall</p> <p>12 with specificity everything that's on</p> <p>13 that checklist.</p> <p>14 BY MR. SCHWABENLAND:</p> <p>15 Q. When was the last time you</p> <p>16 presented a checklist to a student?</p> <p>17 MR. PICCERILLI: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: I can't recall.</p> <p>20 BY MR. SCHWABENLAND:</p> <p>21 Q. Would it have been this year?</p> <p>22 A. Yes.</p> <p>23 Q. And would it have been this</p> <p>24 year that you would have presented a checklist</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. So sometime during this last</p> <p>2 semester she switched over?</p> <p>3 A. Yes.</p> <p>4 Q. And what does she do now?</p> <p>5 A. She's the assistant director of</p> <p>6 student success.</p> <p>7 Q. I'm sorry. Student --</p> <p>8 A. Student success.</p> <p>9 Q. And who heads up that office?</p> <p>10 A. Daniel McDevitt is the director</p> <p>11 of student success.</p> <p>12 Q. And how long has that office</p> <p>13 been around?</p> <p>14 A. I can't answer that.</p> <p>15 Q. Has it been around for several</p> <p>16 years or just formulated?</p> <p>17 A. Several years.</p> <p>18 Q. What is the role of office of</p> <p>19 student success?</p> <p>20 A. I can't tell you exhaustively.</p> <p>21 Q. I don't want that.</p> <p>22 A. I can tell you as I interact</p> <p>23 with them what they're -- because I can't</p> <p>24 pretend to know all that they do. But they do</p>



## CONFIDENTIAL

<p style="text-align: right;">Page 50</p> <p>1 what exactly their office purports to do and  2 it's work with students on their success. So  3 if a student is not doing well in the  4 classroom and maybe it's flagged by a faculty  5 member, they may facilitate a follow-up with  6 that student. If the student is not adjusting  7 well, if a student did poorly their first  8 semester, they have a program to sort of  9 rebound into the second semester. So it's  10 truly about the student's success inside and  11 outside the classroom.  12 Q. And does that office of student  13 success, if you know, does that interact with  14 the office of student disabilities? I am not  15 sure I am saying that office correctly.  16 MR. PICCERILLI: Objection to  17 form.  18 THE WITNESS: I think it's  19 student disability services. I don't  20 know. I can't answer how they  21 interact.  22 BY MR. SCHWABENLAND:  23 Q. Okay. Your office, OCS, you  24 sometimes interact with the office of student</p>	<p style="text-align: right;">Page 52</p> <p>1 you this on the camera here. We've  2 said this with the other witnesses  3 too. In order to protect the names of  4 the plaintiff here and the individual  5 defendant, the plaintiff is John Doe  6 we'll be referring to and the  7 individual defendant is Jane Roe.  8 When I say those names you know who I  9 am referring to; is that correct?  10 THE WITNESS: Yes.  11 MR. SCHWABENLAND: So that's  12 acceptable, that you won't feel  13 confused as to who these two people  14 are, then?  15 THE WITNESS: That's  16 acceptable.  17 MR. SCHWABENLAND: Thank you.  18 Go back on the camera here.  19 THE VIDEOGRAPHER: Back on the  20 record, 10:58.  21 BY MR. SCHWABENLAND:  22 Q. In this present case, John Doe,  23 did you learn at some point that he was  24 registered with the office of student</p>
<p style="text-align: right;">Page 51</p> <p>1 disabilities; is that correct?  2 MR. PICCERILLI: Object to the  3 form.  4 THE WITNESS: Yes.  5 BY MR. SCHWABENLAND:  6 Q. And would that be primarily to  7 see what accommodations might be necessary for  8 a student with a disability?  9 A. I'm never in a position to  10 determine what accommodation might be needed  11 or necessary or appropriate. If a student is  12 registered with the office and they go to the  13 office, we are notified by the office that  14 these accommodations are being offered or put  15 in place. I'm not in a position to do that.  16 Q. I'm jumping ahead. In  17 Mr. Doe's case --  18 MR. SCHWABENLAND: And, by the  19 way, I have to do one thing off the  20 record, if I may.  21 THE VIDEOGRAPHER: Off the  22 record, 10:57.  23 MR. SCHWABENLAND: I need this  24 on the steno. I didn't want to ask</p>	<p style="text-align: right;">Page 53</p> <p>1 disabilities?  2 A. I don't know that I learned  3 that he was registered. I can't recall the  4 specifics.  5 Q. Okay. And that's all I am  6 asking you. Do you have any knowledge that he  7 was registered with the office of student  8 disabilities?  9 MR. PICCERILLI: Objection to  10 form.  11 THE WITNESS: At some point  12 after the outcome I engaged in a  13 conversation with our director of  14 student disability services about an  15 accommodation request to review  16 documents. So in that sense I did  17 learn that he was engaged with the  18 disabilities office.  19 BY MR. SCHWABENLAND:  20 Q. Okay.  21 A. I don't know whether  22 technically I would say I knew that he was  23 registered or not registered. I knew that he  24 was engaged at that point with the office.</p>

14 (Pages 50 - 53)

## CONFIDENTIAL

<p style="text-align: right;">Page 54</p> <p>1 Q. Who is the director of that 2 office? 3 A. Christine Mecke. 4 Q. I'm sorry. What's her first 5 name? 6 A. Christine. 7 Q. Just so it's clear, your 8 conversation with her would have been after 9 the investigation, the findings, and the 10 outcome meeting that -- you were present at 11 the outcome meeting, right? 12 A. I was. 13 Q. And I take it you did not do 14 the investigation on this claim involving John 15 Doe, right? 16 A. Right. 17 Q. And that was done by 18 Ms. Malloy, an outside counsel? 19 A. Correct. 20 Q. So sometime after the outcome 21 meeting the student was afforded an 22 opportunity to what, to review documents? 23 A. Right. 24 Q. Okay.</p>	<p style="text-align: right;">Page 56</p> <p>1 BY MR. SCHWABENLAND: 2 Q. And, if I can, I just want to 3 complete that thought. I take it the policy 4 is that the student can only review documents 5 at that point, right? 6 MR. PICCERILLI: Objection to 7 form. 8 THE WITNESS: In that meeting, 9 yes. 10 BY MR. SCHWABENLAND: 11 Q. Okay. And I could accompany 12 Mr. Doe as an adviser, but I was not permitted 13 to review the documents as an adviser, right? 14 A. Correct. 15 Q. Although we could take breaks 16 and I could walk out with him and talk outside 17 the room; is that correct? 18 A. Yes. 19 Q. And in order for you to 20 maintain the integrity of those documents, 21 that's why you had to sit in that room; is 22 that right? 23 A. Yes. 24 Q. But the accommodation that you</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Right. 2 Q. And he asked -- if I understand 3 correctly, he asked for some type of 4 accommodation and that's when you would 5 have -- in the reviewing of those documents 6 and that's when you had a conversation with 7 the director of student disability? 8 A. Right. Right. 9 Q. And what accommodation did you 10 provide him with? 11 A. Extended time. And so when he 12 came in to review the documents, I cleared my 13 calendar for the day and made sure that there 14 was no rush and that there was an extended 15 time to review. 16 Q. And I was there with him. Is 17 that when I first met you? 18 A. Yes. 19 Q. And I was acting in the 20 position of what the university would term 21 adviser to John Doe; is that correct? 22 MR. PICCERILLI: Objection to 23 form. 24 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 57</p> <p>1 afforded him was that he could have whatever 2 time he needed to review these documents and 3 if he needed to come back again he would 4 certainly be permitted to come back? 5 A. Yes. 6 Q. So that's -- just before that 7 meeting, I take it, that would be around the 8 same time that you, what, spoke with the 9 director of student disability just to confirm 10 that some accommodation would be necessary? 11 A. Right. 12 Q. Did the director of student 13 disability indicate that he had been afforded 14 accommodations academically? 15 MR. PICCERILLI: Objection to 16 form. 17 THE WITNESS: No, that was not 18 pertinent to what we needed to 19 discuss, which was accommodations for 20 the record inspection. 21 BY MR. SCHWABENLAND: 22 Q. So even with that discussion, 23 you didn't learn that he had signed up or 24 registered with that -- with the office of</p>

15 (Pages 54 - 57)

## CONFIDENTIAL

<p style="text-align: right;">Page 58</p> <p>1 student disability --</p> <p>2 MR. PICCERILLI: Objection to</p> <p>3 form.</p> <p>4 BY MR. SCHWABENLAND:</p> <p>5 Q. -- for accommodations early on?</p> <p>6 MR. PICCERILLI: Objection to</p> <p>7 form.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. SCHWABENLAND:</p> <p>10 Q. Okay. Do you know what</p> <p>11 disability or learning difference Mr. Doe was</p> <p>12 claiming to the office of student disability?</p> <p>13 A. I don't from the office of</p> <p>14 student disability. I know that he put it in</p> <p>15 some of the appeal communications to the</p> <p>16 office, but I don't recall what those were.</p> <p>17 That was not any formal notice from disability</p> <p>18 office of any -- nor would we. We would just</p> <p>19 be told that this student is afforded this</p> <p>20 accommodation for this purpose, but not the</p> <p>21 disability that resulted in that</p> <p>22 accommodation.</p> <p>23 Q. I am jumping around here. Has</p> <p>24 OCS in the last five years, I'll say, given</p>	<p style="text-align: right;">Page 60</p> <p>1 objection to the form of the question.</p> <p>2 THE VIDEOGRAPHER: We're back</p> <p>3 on the record, 11:15.</p> <p>4 BY MR. SCHWABENLAND:</p> <p>5 Q. We are back on the record.</p> <p>6 A. I wasn't sure.</p> <p>7 Q. We read the question I just</p> <p>8 posed before we broke. So go ahead.</p> <p>9 A. Yes.</p> <p>10 Q. And what are they told?</p> <p>11 A. I don't know the exact language</p> <p>12 without referencing the document.</p> <p>13 Q. What would you tell them?</p> <p>14 A. I don't go off of the checklist</p> <p>15 script and so we actually go through the</p> <p>16 language that's in the checklist. We read the</p> <p>17 language that's in the checklist with the</p> <p>18 student. So I don't editorialize on that</p> <p>19 checklist.</p> <p>20 Q. And I take it if the student</p> <p>21 has any questions of you then you would answer</p> <p>22 those questions?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So in the checklist, for</p>
<p style="text-align: right;">Page 59</p> <p>1 students accommodations who have learning</p> <p>2 disabilities?</p> <p>3 MR. PICCERILLI: Objection to</p> <p>4 the form.</p> <p>5 THE WITNESS: I can't recall a</p> <p>6 time, but I don't want to say that we</p> <p>7 haven't.</p> <p>8 BY MR. SCHWABENLAND:</p> <p>9 Q. Okay. If a student is advised,</p> <p>10 say, at a pre-investigation meeting, whether</p> <p>11 it be a sexual misconduct charge or a</p> <p>12 nonsexual misconduct charge but serious in</p> <p>13 nature to have a pre-investigation meeting, is</p> <p>14 the student advised on that checklist that</p> <p>15 accommodations can be given?</p> <p>16 (Cell phone ringing)</p> <p>17 MR. PICCERILLI: Excuse me.</p> <p>18 THE VIDEOGRAPHER: Off the</p> <p>19 record, 11:05.</p> <p>20 ---</p> <p>21 (Whereupon, the court reporter</p> <p>22 read back from the record.)</p> <p>23 ---</p> <p>24 MR. PICCERILLI: Just note my</p>	<p style="text-align: right;">Page 61</p> <p>1 the accommodation, does that tell the student</p> <p>2 what he or she has to do to get that</p> <p>3 accommodation?</p> <p>4 A. Yes.</p> <p>5 Q. And so what -- if they want it,</p> <p>6 what do they do?</p> <p>7 A. They need to contact or they</p> <p>8 should contact the director of student</p> <p>9 disability services.</p> <p>10 Q. And then, what, student</p> <p>11 disability services gets in touch with OCS?</p> <p>12 A. Right.</p> <p>13 Q. Okay. So if the student said</p> <p>14 to you or somebody conducting the</p> <p>15 pre-investigation that, "Oh, yeah, I need some</p> <p>16 accommodation, I need some help," you</p> <p>17 wouldn't -- by you, I'm sorry -- OCS wouldn't</p> <p>18 take it upon themselves to get in touch with</p> <p>19 the director -- get in touch with the office</p> <p>20 of student disability, right?</p> <p>21 A. Right.</p> <p>22 Q. Okay. And in that vein has, if</p> <p>23 you know, has any student ever asked for an</p> <p>24 accommodation of OCS to allow assistance from</p>

16 (Pages 58 - 61)

## CONFIDENTIAL

<p style="text-align: right;">Page 62</p> <p>1 someone in taking notes, note taking?</p> <p>2 A. Not that I can recall.</p> <p>3 Q. Okay.</p> <p>4 A. Outside of this instance where</p> <p>5 the request was for a note taker.</p> <p>6 Q. And did John Doe ask for a note</p> <p>7 taker?</p> <p>8 A. For the review of the documents</p> <p>9 after the outcome.</p> <p>10 Q. Okay. And was that provided to</p> <p>11 him?</p> <p>12 A. It was not.</p> <p>13 Q. And do you know why -- and did</p> <p>14 you make the decision on that?</p> <p>15 A. I did not.</p> <p>16 Q. Who made the decision on that?</p> <p>17 A. The director of disability</p> <p>18 services.</p> <p>19 Q. And what did she say as to her</p> <p>20 reason why this was not afforded him?</p> <p>21 A. She did not. She just said,</p> <p>22 "Here are the accommodations that are</p> <p>23 afforded" --</p> <p>24 Q. So --</p>	<p style="text-align: right;">Page 64</p> <p>1 THE WITNESS: Right. But this</p> <p>2 is hypothetical. We would have to at</p> <p>3 that instance see whether that</p> <p>4 accommodation was appropriate for our</p> <p>5 process, it was appropriate to be</p> <p>6 offered. Like, institutionally we</p> <p>7 would have to make the decision on</p> <p>8 whether that was a reasonable</p> <p>9 accommodation in our process, that</p> <p>10 didn't substantively change our</p> <p>11 process.</p> <p>12 BY MR. SCHWABENLAND:</p> <p>13 Q. So the first decision to see,</p> <p>14 then, again, if one was made -- let me speak</p> <p>15 English. If a request for a note taker was</p> <p>16 made, the first decision would be to determine</p> <p>17 if that is reasonable or necessary in light of</p> <p>18 the student's, I will call it a disability or</p> <p>19 a learning difference, right?</p> <p>20 MR. PICCERILLI: Objection.</p> <p>21 Objection to form.</p> <p>22 BY MR. SCHWABENLAND:</p> <p>23 Q. Right?</p> <p>24 A. Right. Yes.</p>
<p style="text-align: right;">Page 63</p> <p>1 A. -- and wouldn't answer or</p> <p>2 articulate reasons why others were not.</p> <p>3 Q. Okay. So what do you recall</p> <p>4 her saying were the accommodations?</p> <p>5 A. Extended time.</p> <p>6 Q. But if she had said yes, an</p> <p>7 adviser could take notes for him, would that</p> <p>8 have been an accommodation then you would have</p> <p>9 provided? By you I mean OCS.</p> <p>10 MR. PICCERILLI: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: I don't see why</p> <p>13 we would not, as long as it was</p> <p>14 something that was from the</p> <p>15 disabilities office.</p> <p>16 BY MR. SCHWABENLAND:</p> <p>17 Q. But then the adviser in that</p> <p>18 role or -- I'm using the term adviser as a</p> <p>19 person who accompanies -- who would accompany</p> <p>20 him to take notes, would be the person, then,</p> <p>21 to review the documents with the student; is</p> <p>22 that correct?</p> <p>23 MR. PICCERILLI: Objection to</p> <p>24 form.</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. But then there's a second</p> <p>2 aspect that would have to be decided.</p> <p>3 Assuming that the director at student</p> <p>4 disabilities would say yes -- he -- I will use</p> <p>5 the term he, generically -- he should be</p> <p>6 entitled -- he should be afforded the</p> <p>7 opportunity to have a note taker with him,</p> <p>8 then you have to -- then OCS would have to</p> <p>9 decide, well, are you at liberty, because of</p> <p>10 your protocol that were set up, to allow this</p> <p>11 to happen?</p> <p>12 A. Right. I think at that point</p> <p>13 we would engage in conversation with our</p> <p>14 general counsel to see the application of that</p> <p>15 accommodation within our process, so as not to</p> <p>16 change our process substantively.</p> <p>17 Q. So I take it from our</p> <p>18 discussion that you don't recall as you sit</p> <p>19 here ever having to make that decision whether</p> <p>20 or not to afford -- to permit a note taker to</p> <p>21 be involved with a student?</p> <p>22 A. Right. Yes.</p> <p>23 Q. Okay. We were at the point of</p> <p>24 the example of a nonsexual but serious</p>

17 (Pages 62 - 65)

## CONFIDENTIAL

<p style="text-align: right;">Page 66</p> <p>1 offense.</p> <p>2 MR. PICCERILLI: Can we we go</p> <p>3 off the video record and off the</p> <p>4 record?</p> <p>5 THE VIDEOGRAPHER: Off the</p> <p>6 record, 11:21.</p> <p>7</p> <p>8 (Off the record)</p> <p>9</p> <p>10 THE VIDEOGRAPHER: Back on the</p> <p>11 record, 11:25.</p> <p>12 BY MR. SCHWABENLAND:</p> <p>13 Q. Again, we are in a setting -- I</p> <p>14 will get back to that setting. I forgot to</p> <p>15 ask you something. Since coming to St. Joe's</p> <p>16 University, I know your work schedule, but</p> <p>17 have you gone on to any additional educational</p> <p>18 pursuits?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And when did you do that</p> <p>21 and what area have you pursued?</p> <p>22 A. So understanding your question</p> <p>23 of what you mean by educational pursuits.</p> <p>24 Q. Yes. In other words, you have</p>	<p style="text-align: right;">Page 68</p> <p>1 dissertation yet, have you?</p> <p>2 A. No.</p> <p>3 Q. Do you have any idea what</p> <p>4 subject you are going to pursue?</p> <p>5 A. Not concretely.</p> <p>6 Q. Okay. What is -- tell me, how</p> <p>7 would you describe this educational leadership</p> <p>8 doctoral program?</p> <p>9 A. It's a blend -- it's</p> <p>10 interdisciplinary. So there are classmates</p> <p>11 of mine working in higher education,</p> <p>12 classmates working in nonprofit, and</p> <p>13 classmates working in K/12 education systems.</p> <p>14 So it's not exclusively higher education. And</p> <p>15 it's administrative. It's leadership. There</p> <p>16 is classes on financing and budgeting and</p> <p>17 planning.</p> <p>18 Q. Regardless of what department</p> <p>19 you're in or where you work?</p> <p>20 A. Right.</p> <p>21 Q. Okay. Does the program have</p> <p>22 anything to do with the disciplining of</p> <p>23 students or the handling of discipline cases?</p> <p>24 A. There is a course on law and</p>
<p style="text-align: right;">Page 67</p> <p>1 gone from having a master's? Are you pursuing</p> <p>2 any other certification, doctorate, anything</p> <p>3 like that?</p> <p>4 A. Yes. Yes, I am currently in</p> <p>5 the educational leadership doctoral program</p> <p>6 and I started that in the fall of 2016.</p> <p>7 Q. And how long a course -- well,</p> <p>8 I'm sorry. How long is that program?</p> <p>9 A. It's three years straight of</p> <p>10 coursework and then additional time after</p> <p>11 that, that can range.</p> <p>12 Q. And where are you taking that,</p> <p>13 at the university?</p> <p>14 A. At St. Joseph's University.</p> <p>15 Q. And is that a continuous three</p> <p>16 years, if you know?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And you said after the</p> <p>19 three years what happens?</p> <p>20 A. It's not a prescribed time.</p> <p>21 After that three years of coursework there is</p> <p>22 dissertation preparation and defense, which</p> <p>23 can take a range of time.</p> <p>24 Q. You haven't started your</p>	<p style="text-align: right;">Page 69</p> <p>1 policy.</p> <p>2 Q. On what?</p> <p>3 A. Law and policy, with at least</p> <p>4 one class within that course on student</p> <p>5 discipline on a theoretical level.</p> <p>6 Q. And have you taken that course?</p> <p>7 A. Yes.</p> <p>8 Q. And does that course include</p> <p>9 applications of Title IX?</p> <p>10 A. Yes.</p> <p>11 Q. So it would include the</p> <p>12 handling or the -- the handling of sexual</p> <p>13 misconduct claims?</p> <p>14 A. It was a really high-level</p> <p>15 review of federal statutes and so it was more</p> <p>16 about what Title IX is and what Title IX</p> <p>17 requires of institutions, but not specifics of</p> <p>18 disciplinary grievance procedures.</p> <p>19 Q. So when you say high level, who</p> <p>20 presented it? Do you know?</p> <p>21 A. The faculty.</p> <p>22 Q. I'm sorry?</p> <p>23 A. The professor of the course.</p> <p>24 Q. But who is the professor?</p>

18 (Pages 66 - 69)



## CONFIDENTIAL

<p style="text-align: right;">Page 70</p> <p>1 A. Dr. Anderson, Cary Anderson.</p> <p>2 Q. Dr. Anderson?</p> <p>3 A. Yes.</p> <p>4 Q. So he presented issues on Title</p> <p>5 IX, then?</p> <p>6 A. Yes.</p> <p>7 Q. And then you said it was</p> <p>8 presented as to this is what Title IX is?</p> <p>9 A. Along with other --</p> <p>10 Q. Statutes?</p> <p>11 A. -- statutes and constitutional</p> <p>12 rights afforded. It was a very high-level</p> <p>13 review of federal statutes in one course.</p> <p>14 Q. I am not sure what you mean by</p> <p>15 high level. Can you explain?</p> <p>16 A. Not in depth, right. It was --</p> <p>17 Q. An overview?</p> <p>18 A. An overview of statutes.</p> <p>19 Q. And at the time that this was</p> <p>20 done, I take it, at least at the university,</p> <p>21 the sexual misconduct policy was in place; is</p> <p>22 that correct?</p> <p>23 A. Yes.</p> <p>24 Q. Did Dr. Anderson do any</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Good. Okay. And so you're</p> <p>2 pursuing your doctorate. Have you gotten any</p> <p>3 additional certifications since your master's?</p> <p>4 A. Testing my memory here.</p> <p>5 There's a couple that I do. I don't know if</p> <p>6 I'd call them certifications in a traditional</p> <p>7 sense. It's not that it comes with any</p> <p>8 licensure. But I did work with the</p> <p>9 Anti-Defamation League for facilitating</p> <p>10 diversity dialogues on campus and that was a</p> <p>11 full, I think, two weeks of training for that.</p> <p>12 More recently, I received a certificate in the</p> <p>13 application of restorative justice on Catholic</p> <p>14 colleges and universities, focusing on</p> <p>15 community and community impact.</p> <p>16 Q. Focusing on what?</p> <p>17 A. Community and community</p> <p>18 impacts.</p> <p>19 Q. The Anti-Defamation League, for</p> <p>20 your participation you received a thank you</p> <p>21 and a certificate of --</p> <p>22 A. Yes.</p> <p>23 Q. -- participation, I would</p> <p>24 imagine?</p>
<p style="text-align: right;">Page 71</p> <p>1 discussions or presentation on the sexual</p> <p>2 misconduct policy at the university?</p> <p>3 A. No.</p> <p>4 Q. And that particular course was</p> <p>5 how long?</p> <p>6 A. Six weeks.</p> <p>7 Q. In the process of that being</p> <p>8 presented, do you recall -- I'm sorry. Let me</p> <p>9 go back. For that course were you given any</p> <p>10 pamphlets concerning the curriculum?</p> <p>11 A. We received a course syllabus</p> <p>12 and two texts that went along with the course.</p> <p>13 Q. So would you still have that,</p> <p>14 in terms of what was presented at that</p> <p>15 particular course?</p> <p>16 A. It didn't go into specifics of</p> <p>17 what was presented at that course. It was</p> <p>18 what day what content would be presented, was</p> <p>19 the syllabus.</p> <p>20 Q. Okay. Were you handed out any</p> <p>21 papers concerning applicable laws?</p> <p>22 A. Not that I can recall.</p> <p>23 Q. Okay. Did you get an A?</p> <p>24 A. I did.</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Yes.</p> <p>2 Q. And was it a one-time</p> <p>3 presentation?</p> <p>4 A. It was a week-long, almost</p> <p>5 train-the-trainer program.</p> <p>6 Q. Okay.</p> <p>7 A. There was a group of us that</p> <p>8 were trained to facilitate these dialogues on</p> <p>9 our campus.</p> <p>10 Q. And so have you gone on to use</p> <p>11 that at all, that training?</p> <p>12 A. I did. This was years ago and</p> <p>13 at that time, in the years following the</p> <p>14 training I did.</p> <p>15 Q. The Anti-Defamation League --</p> <p>16 I'm sorry -- would be any type of defamation,</p> <p>17 because of sex, religion, color, things like</p> <p>18 that?</p> <p>19 A. It was more about understanding</p> <p>20 our own identities and identities of others</p> <p>21 and creating a welcoming community, but not</p> <p>22 specific on prohibited or protected</p> <p>23 categories.</p> <p>24 Q. And I am not sure what you mean</p>



## CONFIDENTIAL

<p style="text-align: right;">Page 74</p> <p>1 by application of restorative justice. What 2 is that? 3 A. Sure. That is a principle of 4 understanding -- and even outside. It wasn't 5 a specifically community standards training. 6 There were folks from across student 7 affairs -- 8 Q. Okay. 9 A. -- outside of the university. 10 And it's more about understanding what makes 11 up a community, and when something happens 12 that disrupts the community the importance of 13 having the community be a part of that 14 response and understanding the harm and what 15 the follow-up would be. 16 Q. Did any of that have to deal 17 with sexual misconduct offenses within a 18 community? 19 A. A small portion of it, yes. 20 Q. Any other types of 21 certifications that you may have received? 22 And, again, I know you said, "I'm not sure" -- 23 A. No. I am not sure. And I 24 would note that the restorative justice</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. What is that? 2 A. Association of Student Conduct 3 Administrators. I have gone to conferences 4 and sessions and took advantage of those 5 professional development opportunities that 6 were afforded to me. 7 Q. Okay? 8 A. And truly relying on my 9 colleagues to help me understand as it 10 pertains to community standards, including 11 general counsel. 12 Q. Okay. And so your colleagues 13 would be whom? 14 A. Dr. Anderson and Dr. White, Dr. 15 Perry, Mary-Elaine Perry, who is our Title IX 16 coordinator. 17 Q. Now, she is leaving, I'm told. 18 Is that your understanding? 19 A. I don't know the specifics. 20 Q. Okay. But right now she's 21 there? 22 A. She is. 23 Q. Okay. And she's the Title IX 24 coordinator?</p>
<p style="text-align: right;">Page 75</p> <p>1 happened this summer, so it was after the 2 matter in question. 3 Q. Okay. Let me ask you this: 4 Did you ever receive any type of, I will call 5 it certification or licensing or anything in 6 counseling? 7 A. No. 8 Q. Do you hold -- do you consider 9 yourself to be a Title IX authority or 10 coordinator? 11 A. I am not a coordinator. 12 Q. Okay. 13 A. I am well-versed in Title IX as 14 it pertains to my job. I wouldn't call myself 15 an authority. 16 Q. Okay. And you say you are 17 well-versed. How did you become well-versed? 18 A. Through experience, through 19 working in the office for over ten years, 20 taking advantage of my professional 21 development, ASCAs, resources, and I have gone 22 to conferences. 23 Q. I'm sorry. AS -- 24 A. ASCA.</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Yes. 2 Q. I know you said -- we spoke 3 about one of the courses in your doctoral 4 program you had on the law and that involved 5 some aspect of Title IX; is that correct? 6 A. Yes. 7 Q. But I take it you've taken 8 other conferences or attended other 9 conferences where the issue concerning Title 10 IX or the handling of sexual misconduct has 11 been an issue discussed? 12 MR. PICCERILLI: Objection to 13 form. 14 THE WITNESS: Yes. 15 BY MR. SCHWABENLAND: 16 Q. And would you be able to tell 17 me -- I'm sorry. Would you have a list -- let 18 me start over again. Do you have a resumé? 19 A. Yes. 20 Q. And would this resumé talk 21 about not only your educational background and 22 work history but it would also talk about the 23 courses that you have attended at least over 24 the last ten years or so?</p>

20 (Pages 74 - 77)

## CONFIDENTIAL

<p style="text-align: right;">Page 78</p> <p>1 A. No.</p> <p>2 Q. Do you have a list of what</p> <p>3 courses you have attended over the last ten</p> <p>4 years or five years?</p> <p>5 A. No.</p> <p>6 Q. If you wanted to find out what</p> <p>7 courses you took involving Title IX, would you</p> <p>8 be able to find out?</p> <p>9 A. No.</p> <p>10 Q. Are you able to tell me how</p> <p>11 many courses you took involving Title IX?</p> <p>12 A. You're using the word courses.</p> <p>13 I would use the word sessions at a conference.</p> <p>14 Q. Okay.</p> <p>15 A. And so it's much -- in higher</p> <p>16 education it's in that vein, right, and so I</p> <p>17 go to a conference and there is breakouts and</p> <p>18 this one happens to be on Title IX or this one</p> <p>19 happens to be on getting students to attend</p> <p>20 programs, right. I mean, it's a breakout. So</p> <p>21 I don't know over the course of over a decade</p> <p>22 what sessions I've gone to about what. That's</p> <p>23 not something that's cataloged in my resumé.</p> <p>24 Q. So what you're talking about</p>	<p style="text-align: right;">Page 80</p> <p>1 I've sat through those, conversations with</p> <p>2 colleagues that I would consider training,</p> <p>3 when we are discussing policy and practice</p> <p>4 implementation, best practices.</p> <p>5 Q. And that conversation, the</p> <p>6 colleagues you identified were Dr. Anderson,</p> <p>7 Dr. White, Dr. Perry, counsel for the</p> <p>8 university?</p> <p>9 A. Counsel.</p> <p>10 Q. Anybody else who would be</p> <p>11 included in that?</p> <p>12 A. Not that I can name now.</p> <p>13 Q. And what do you mean by best</p> <p>14 practices? What does that mean?</p> <p>15 A. What other institutions might</p> <p>16 be doing. You know, if you look at, even</p> <p>17 outside of Title IX, if there is something</p> <p>18 that other institutions or many institutions</p> <p>19 are doing or interpreting things a certain</p> <p>20 way, I guess, generally speaking that's best</p> <p>21 practice. That's kind of a loaded term, but</p> <p>22 it's used in every industry of what's the best</p> <p>23 practice, what are folks doing out there that</p> <p>24 are facing the same challenges.</p>
<p style="text-align: right;">Page 79</p> <p>1 is, you would attend a day conference or maybe</p> <p>2 a two-day conference?</p> <p>3 A. Yes.</p> <p>4 Q. And you would see what sessions</p> <p>5 are being offered and then you pick and choose</p> <p>6 which ones you would like to go to, right?</p> <p>7 A. Yes.</p> <p>8 Q. Would you have a list someplace</p> <p>9 at least of what conferences you have</p> <p>10 attended, say, each year?</p> <p>11 A. I don't have a list.</p> <p>12 Q. Is there any requirement with</p> <p>13 regard to your position or your job that you</p> <p>14 have to attend so many continuing education</p> <p>15 courses or conferences?</p> <p>16 A. No.</p> <p>17 Q. So I guess my question to you</p> <p>18 is: What training have you received in Title</p> <p>19 IX over the years?</p> <p>20 A. There's been these conference</p> <p>21 sessions, attending pretty frequent webinars</p> <p>22 through our association, that association of</p> <p>23 student conduct administrators, those</p> <p>24 webinars, the Clery Center hosts webinars, so</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Okay. Have you yourself</p> <p>2 written any articles or memos about procedural</p> <p>3 best practices?</p> <p>4 A. No.</p> <p>5 MR. PICCERILLI: Let me just</p> <p>6 object to the form. I am not so sure</p> <p>7 what areas you were referring to.</p> <p>8 MR. SCHWABENLAND: Okay.</p> <p>9 BY MR. SCHWABENLAND:</p> <p>10 Q. Have you yourself done any</p> <p>11 studies on what practices have been at other</p> <p>12 teaching institutions of higher learning?</p> <p>13 MR. PICCERILLI: Objection to</p> <p>14 form.</p> <p>15 THE WITNESS: With regards to?</p> <p>16 BY MR. SCHWABENLAND:</p> <p>17 Q. Well, with regard to either the</p> <p>18 handling of -- well, I will do it one at a</p> <p>19 time. With regards to sexual misconduct</p> <p>20 charges.</p> <p>21 A. Can you repeat what the</p> <p>22 question was?</p> <p>23 Q. Sure. I wish I could, but I'll</p> <p>24 try. Have you yourself done any research</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 82</p> <p>1 yourself on what the practices at any other  2 institution of higher learning involving  3 sexual misconduct charges?  4 A. No.  5 Q. How about involving Title IX  6 violations?  7 A. Not that I can recall.  8 Q. Okay. How about involving any  9 type of student misconduct, whether sexual or  10 nonsexual?  11 A. Yes, but I would explain what I  12 mean by my understanding of your use of the  13 word "research." This is not institutional  14 review board research. This might be an email  15 out to colleagues regionally to see what are  16 folks doing about hoverboards and should they  17 been in the residence halls, right. I  18 consider that to be research into what is best  19 practice, but it's not research in a  20 traditional sense of research. But nothing in  21 the Title IX or -- on sexual misconduct, but  22 certainly within the application of codes on  23 campuses.  24 Q. The sexual misconduct policy</p>	<p style="text-align: right;">Page 84</p> <p>1 then you had to become involved as to how you  2 are to apply this in your department at OCS?  3 A. Yes.  4 Q. And how did that go about? Who  5 taught you and what was taught?  6 A. I can't recall the specifics.  7 Q. Can you recall anything?  8 A. No. We're talking over three  9 years ago for policy implementation. I don't  10 remember the specific meetings regarding the  11 implementation.  12 Q. Do you recall any meetings  13 concerning going from a hearing officer to now  14 a single investigator model?  15 MR. PICCERILLI: Objection to  16 form.  17 THE WITNESS: I don't recall  18 specific meetings. I don't recall  19 specific meetings, but that's not to  20 say that they did not take place.  21 BY MR. SCHWABENLAND:  22 Q. Take away the meeting, do you  23 recall discussions with anyone else?  24 A. Yes. I mean, there had to have</p>
<p style="text-align: right;">Page 83</p> <p>1 that came into existence at St. Joseph's, I  2 had started to ask you questions concerning  3 that. Were you yourself, as the director then  4 of OCS, were you involved in any of the  5 wording within that policy or the formulation  6 of any wording, such as you review drafts and  7 make recommendations, anything like that?  8 A. No.  9 Q. When did you first learn of the  10 policy, when it became effective, I mean, when  11 it was finalized and saying, "This is what we  12 are going to do. It's going to be effective"?  13 MR. PICCERILLI: Object to the  14 form.  15 THE WITNESS: I don't recall  16 exactly, but it would not have been  17 the day that it became effective.  18 There was notification. I was  19 involved prior to effective in terms  20 of operationalizing the policy into  21 our practice.  22 BY MR. SCHWABENLAND:  23 Q. So once the wording of the  24 policy was finalized but not made effective</p>	<p style="text-align: right;">Page 85</p> <p>1 been discussions about putting this into  2 practice. This wasn't where it was a document  3 on my desk that it was now I needed to move  4 forward. There were discussions.  5 Q. Prior to the implementation of  6 that -- when it became effective, the sexual  7 misconduct policy, were you acquainted with  8 the single investigator model?  9 A. Yes.  10 Q. And how did you become  11 acquainted with that?  12 A. That was gaining popularity, if  13 you will, within the sort of best practices  14 and so attending at conferences or seeing on  15 various listserves that institutions were  16 moving towards or thinking about an  17 investigative model.  18 Q. And in becoming acquainted with  19 these issues of Title IX were you acquainted  20 with Dear Colleague letters?  21 A. Yes.  22 Q. And that would be from the  23 Office of Civil Rights; is that correct?  24 A. Right.</p>

22 (Pages 82 - 85)

## CONFIDENTIAL

<p style="text-align: right;">Page 86</p> <p>1 Q. And were you aware of the Q&amp;As 2 put out by the Office of Civil Rights with 3 those Dear Colleague letters? 4 A. I'm aware of it. 5 Q. And is this something that you 6 would routinely review over the years? 7 A. I am having trouble with your 8 wording, routinely. 9 Q. Okay. Well, it's not issued 10 every year, right? Do you know when the last 11 one was issued, the Dear Colleague letter and 12 the question and answer? 13 A. There was an issuance in 2017, 14 I do know that. 15 Q. And did you review that 16 material? 17 A. I did. 18 Q. And did you review it -- did 19 you talk with anybody at the university about 20 the recommendations of that Dear Colleague 21 letter? 22 A. I can't recall specific 23 meetings, but I imagine I did talk with my 24 supervisor about it or Title IX coordinator</p>	<p style="text-align: right;">Page 88</p> <p>1 BY MR. SCHWABENLAND: 2 Q. I'm just asking what you know. 3 A. What I know is that I didn't 4 have any reason to suspect that we were -- to 5 make any changes based on the 2017 Q and A's 6 or documents. Our Title IX coordinator, our 7 general counsel, and my supervisor, I trust, 8 were more engaging in those conversations. I 9 was not a part of. 10 Q. So you didn't participate in 11 any such conversations? 12 A. Not formal conversations, no. 13 Q. Or how about informal? 14 A. We are -- we care about our 15 work and so when something comes out we are 16 going to talk about it. So I don't want to 17 minimize a two-minute conversation about, 18 "Hey, this new document, did you see it" kind 19 of thing. But there were no substantive, 20 "Let's talk about what we should be doing or 21 aren't doing." Like I said, I have no reason 22 to think that we are not -- that changes 23 should have been made and that we weren't in 24 compliance with what we should have been.</p>
<p style="text-align: right;">Page 87</p> <p>1 about it. 2 Q. Your supervisor would have been 3 Dr. White? 4 A. Yes. 5 Q. And your Title IX coordinator 6 would have been Dr. Perry? 7 A. Dr. Perry. 8 Q. Do you know if any studies were 9 made -- I'm sorry. Do you know if anybody at 10 the university assumed responsibility to 11 review the recommendations made by that Dear 12 Colleague letter and the questions and answers 13 in 2017 and compare it to what was going on at 14 the university then? 15 MR. PICCERILLI: Can I hear 16 that question back, please? 17 --- 18 (Whereupon, the court reporter 19 read back from the record.) 20 --- 21 THE WITNESS: I don't want to 22 speak to what others were responsible 23 for. 24</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. I will tell you, the sexual 2 misconduct policy, a copy that I have -- and I 3 can show it to you later on -- but the -- that 4 is -- it became effective as of 2015, I think 5 June -- I think June -- and then it was 6 revised in 2017. Is that your understanding 7 or you don't -- 8 A. Yes. 9 Q. Okay. Do you know what the 10 revisions were in 2017? 11 A. I can't give you an exhaustive 12 account. One thing that I do know was an 13 intention within the policy was to provide for 14 more gender-inclusive language. So I know 15 that there was review of many of our policies 16 at that time to make sure they were inclusive 17 for gender. 18 Q. What do you mean by gender -- I 19 think I know what you mean, but since I am 20 asking you the question, what do you mean by 21 gender inclusive? 22 A. Really removing the binary 23 "he/she" and changing it to "theirs" to be 24 welcoming to our students that don't identify</p>



## CONFIDENTIAL

<p style="text-align: right;">Page 90</p> <p>1 on a binary of male/female.</p> <p>2 Q. Okay. So anything else that</p> <p>3 you can recall about the revision?</p> <p>4 A. I can't recall any other</p> <p>5 specifics.</p> <p>6 Q. But what sticks in your mind is</p> <p>7 that you wanted to make it more gender</p> <p>8 inclusive?</p> <p>9 A. Right, and that sticks in my</p> <p>10 mind because we were doing that with other</p> <p>11 policies and that was taking place at other</p> <p>12 institutions, sort of taking a look at all the</p> <p>13 policies. We did the same thing within our</p> <p>14 community standards process in the handbooks,</p> <p>15 so that's why I remember that piece.</p> <p>16 Q. Let's go back to the example.</p> <p>17 I am jumping back now. The example of</p> <p>18 nonsexual charges against a student of a</p> <p>19 serious nature that would warrant a</p> <p>20 pre-investigative meeting -- I'm sorry -- a</p> <p>21 prehearing meeting, what would be the next</p> <p>22 step that that student would be told --</p> <p>23 MR. SCHWABENLAND: Objection.</p> <p>24</p>	<p style="text-align: right;">Page 92</p> <p>1 A. It is part of their job</p> <p>2 responsibilities. It is all of the</p> <p>3 professional staff members who work in the</p> <p>4 office of residence life and the staff members</p> <p>5 in community standards. So this isn't where</p> <p>6 we put a notice out -- it's not that we put an</p> <p>7 open invitation for somebody to volunteer to</p> <p>8 be it. It's part of their responsibilities to</p> <p>9 serve as an administrative hearing officer.</p> <p>10 Q. Do they need any special</p> <p>11 certification to act as the hearing officer or</p> <p>12 is this internal training?</p> <p>13 A. Internal training.</p> <p>14 Q. So is there a course -- I'm</p> <p>15 sorry. Is there training courses or meetings</p> <p>16 set up that someone who is willing to be a</p> <p>17 hearing officer must complete before he or she</p> <p>18 can be a hearing officer?</p> <p>19 A. Yes.</p> <p>20 Q. And would that be in that</p> <p>21 manual? I'm sorry. The manual we talked</p> <p>22 about was instructions on how to engage</p> <p>23 students, right?</p> <p>24 A. Correct.</p>
<p style="text-align: right;">Page 91</p> <p>1 BY MR. SCHWABENLAND:</p> <p>2 Q. -- after the prehearing</p> <p>3 meeting?</p> <p>4 A. At the prehearing meeting?</p> <p>5 Q. Yes.</p> <p>6 A. They would be -- through that</p> <p>7 prehearing meeting they would be told about</p> <p>8 the process and what to expect and that they</p> <p>9 are scheduled for an administrative or board</p> <p>10 hearing.</p> <p>11 Q. Okay.</p> <p>12 A. That will be the next piece.</p> <p>13 Q. Now, the person who does the</p> <p>14 checkoff list, can that person still be -- can</p> <p>15 that person also be the hearing officer?</p> <p>16 A. Yes.</p> <p>17 Q. And so how is the hearing</p> <p>18 officer selected, then?</p> <p>19 A. It's assigned by the community</p> <p>20 standards office.</p> <p>21 Q. Okay. Do you have a list of</p> <p>22 qualified people?</p> <p>23 A. We do.</p> <p>24 Q. And what makes them qualified?</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Would there be a training</p> <p>2 manual for hearing officers?</p> <p>3 A. It's essentially the same</p> <p>4 manuals. So we'll pull out pieces of that</p> <p>5 manual over the course of the training</p> <p>6 workshops and over the course of the year.</p> <p>7 It's not a one-time training.</p> <p>8 Q. Have you yourself conducted the</p> <p>9 training courses?</p> <p>10 A. Yes.</p> <p>11 Q. And who else conducts the</p> <p>12 training courses?</p> <p>13 A. Well, the assistant director in</p> <p>14 the office of community standards, so this</p> <p>15 past year Emily was a part of those trainings</p> <p>16 for the hearing officers; the director of</p> <p>17 residence life; we invite the Title IX</p> <p>18 coordinator to come in and share perspective</p> <p>19 on Title IX. But, again, these folks aren't</p> <p>20 hearing anything sexual misconduct. It's more</p> <p>21 for their professional understanding of Title</p> <p>22 IX. We might invite other campus partners to</p> <p>23 come in our counseling center to talk about,</p> <p>24 you know, kind of considerations through a</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 94</p> <p>1 hearing.</p> <p>2 Q. Okay. But before the sexual</p> <p>3 misconduct policy became effective in 2015</p> <p>4 hearing officers would also hear sexual</p> <p>5 misconduct charges?</p> <p>6 A. Those hearing officers would</p> <p>7 not, because we did not -- we are talking</p> <p>8 again about some of them being what I was when</p> <p>9 I was at Siena College hearing lower-level</p> <p>10 community cases. So those folks who were</p> <p>11 assigned sexual misconduct cases before the</p> <p>12 investigation model were very well trained</p> <p>13 within community standards, maybe the director</p> <p>14 of residence life, so not everyone, because we</p> <p>15 saw that as the needing of additional</p> <p>16 training.</p> <p>17 Q. Let's get back to this</p> <p>18 nonsexual serious offense after the checklist</p> <p>19 is done. By that time the student would know</p> <p>20 what he or she is charged with, right?</p> <p>21 A. Could you repeat that?</p> <p>22 Q. Sure. By that time, after he</p> <p>23 got the notice letter, had the</p> <p>24 pre-investigative -- I'm sorry -- prehearing</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Yes.</p> <p>2 Q. Would the student also know</p> <p>3 that in the event that he or she does not want</p> <p>4 to appear you can write something out and hand</p> <p>5 it in and ask that it be considered?</p> <p>6 A. Yes.</p> <p>7 Q. Sometimes the complainant</p> <p>8 doesn't want to show up, so the complainant</p> <p>9 would ask to submit a statement; is that</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And the same would be true for</p> <p>13 the respondent, right?</p> <p>14 A. Right.</p> <p>15 Q. And would the student, whether</p> <p>16 a complainant or a respondent, be entitled to</p> <p>17 see any physical evidence, such as pictures or</p> <p>18 any statements prior to the hearing?</p> <p>19 A. They would be able to see what</p> <p>20 we had at that time.</p> <p>21 Q. So if you had a statement from</p> <p>22 the other side, if you had pictures, if you</p> <p>23 had an incident report, either student could</p> <p>24 avail themselves -- either could avail himself</p>
<p style="text-align: right;">Page 95</p> <p>1 meeting where a checklist is reviewed, by that</p> <p>2 time the student would know what he or she is</p> <p>3 charged with, right?</p> <p>4 A. They would know the policies</p> <p>5 implicated, right.</p> <p>6 Q. Would they know the offenses</p> <p>7 that they are charged with? I am talking</p> <p>8 about the nonsexual offenses.</p> <p>9 A. Yeah, they would know the</p> <p>10 policies implicated, which is the offense. So</p> <p>11 they would know they are charged with</p> <p>12 violating the drug policy.</p> <p>13 Q. And if it is an assault they</p> <p>14 would be charged with an assault, right?</p> <p>15 A. That's not what we call it.</p> <p>16 Q. What do you call it?</p> <p>17 A. There is an expectation, call</p> <p>18 it abusing, threatening, or endangering</p> <p>19 others, is what we call it. So we are not</p> <p>20 charging with assault. Assault is a legal</p> <p>21 definition.</p> <p>22 Q. Would the student also know</p> <p>23 that he or she can bring witnesses to the</p> <p>24 hearing?</p>	<p style="text-align: right;">Page 97</p> <p>1 or herself of reviewing that in order to</p> <p>2 prepare for the hearing?</p> <p>3 MR. PICCERILLI: Objection to</p> <p>4 form.</p> <p>5 THE WITNESS: They could.</p> <p>6 BY MR. SCHWABENLAND:</p> <p>7 Q. Okay. Do they usually do that?</p> <p>8 A. I don't want to say usually or</p> <p>9 not usually. Some did. Some didn't.</p> <p>10 Q. Okay. But, nevertheless, they</p> <p>11 had that opportunity in order to prepare for</p> <p>12 their presentation at the hearing?</p> <p>13 A. Yes, if they wished.</p> <p>14 Q. Let's stick with the procedure</p> <p>15 now. At the hearing each person can bring,</p> <p>16 what, one adviser?</p> <p>17 A. Right.</p> <p>18 Q. Can the adviser take notes at</p> <p>19 that hearing?</p> <p>20 A. Yes.</p> <p>21 Q. Would the adviser be able to</p> <p>22 see the physical evidence or is that something</p> <p>23 only the party can see?</p> <p>24 A. Only the students can see that.</p>

25 (Pages 94 - 97)



## CONFIDENTIAL

<p style="text-align: right;">Page 98</p> <p>1 The advisers cannot.</p> <p>2 Q. Okay. You used the term</p> <p>3 hearing officer. Is it always only one</p> <p>4 hearing officer or sometimes can it be, like,</p> <p>5 a panel of three or something?</p> <p>6 A. We have two boards that can be</p> <p>7 utilized.</p> <p>8 Q. And who would be on these</p> <p>9 boards?</p> <p>10 A. We have one board for a lower</p> <p>11 level, low- to mid-level incidents. That's a</p> <p>12 peer review board and it's all students. It's</p> <p>13 a pretty competitive, high selection interview</p> <p>14 process for them. Then we have what's called</p> <p>15 a community standards board. It's students,</p> <p>16 faculty, and staff. The students on that</p> <p>17 board are drawn from the peer review board and</p> <p>18 the faculty and staff are -- they are</p> <p>19 voluntary. They are choosing to be on that</p> <p>20 board.</p> <p>21 Q. Okay. Before getting to the</p> <p>22 hearing is there an opportunity for the</p> <p>23 students if they want to have something</p> <p>24 alternative to actually going to a hearing, if</p>	<p style="text-align: right;">Page 100</p> <p>1 be, you know, a conflict between two students</p> <p>2 that was loud and they were swearing at each</p> <p>3 other in the lobby and institutionally we are</p> <p>4 saying that it's not in the students' -- it is</p> <p>5 in the students' interest that we resolve this</p> <p>6 without formal charges and so we would resolve</p> <p>7 that alternatively that way. But if it's a --</p> <p>8 Q. If it's a serious nonsexual</p> <p>9 offense --</p> <p>10 A. Yes. We are not going to</p> <p>11 have an alternative --</p> <p>12 MR. PICCERILLI: Let him finish</p> <p>13 the question.</p> <p>14 MR. SCHWABENLAND: I was</p> <p>15 finished.</p> <p>16 THE WITNESS: Does that make</p> <p>17 sense?</p> <p>18 BY MR. SCHWABENLAND:</p> <p>19 Q. It does.</p> <p>20 A. It's not an option for the</p> <p>21 students to choose, "I want this to be</p> <p>22 resolved alternatively."</p> <p>23 Q. So, depending on the</p> <p>24 seriousness of the offense, whether it's a</p>
<p style="text-align: right;">Page 99</p> <p>1 they can work out an alternative -- I'll</p> <p>2 phrase it as -- I don't know if you have</p> <p>3 anything like this -- an alternative</p> <p>4 resolution of a dispute?</p> <p>5 MR. PICCERILLI: Objection to</p> <p>6 form.</p> <p>7 THE WITNESS: That's not a</p> <p>8 choice of the students. We have</p> <p>9 alternative resolutions where we</p> <p>10 institutionally are choosing to</p> <p>11 resolve it without formal charges.</p> <p>12 But a student can't come in and say "I</p> <p>13 want to do this this way." Once we</p> <p>14 proceed with a hearing, the hearing</p> <p>15 will take place.</p> <p>16 BY MR. SCHWABENLAND:</p> <p>17 Q. So is that decision -- is that</p> <p>18 possibility of alternative resolution really</p> <p>19 only available up until the time that a formal</p> <p>20 notice of charge goes out?</p> <p>21 A. Right. It's not even an</p> <p>22 opportunity to students. It is one of the</p> <p>23 assignment options for the office of community</p> <p>24 standards. So an alternative resolution could</p>	<p style="text-align: right;">Page 101</p> <p>1 first time or repeated, there is a number of</p> <p>2 factors for, I will say, OCS or the hearing</p> <p>3 officer -- I'm sorry -- OCS to decide if this</p> <p>4 would qualify for some type of alternative</p> <p>5 handling?</p> <p>6 A. Right.</p> <p>7 Q. I take it at the hearing</p> <p>8 usually both the complainant and the</p> <p>9 respondent shows up, the complainant and the</p> <p>10 respondent shows up?</p> <p>11 MR. PICCERILLI: Objection to</p> <p>12 form.</p> <p>13 BY MR. SCHWABENLAND:</p> <p>14 Q. Again, I'm in the nonsexual</p> <p>15 offenses of a serious nature.</p> <p>16 A. That's not the case and, in</p> <p>17 fact, that's rarely the case.</p> <p>18 Q. That's rarely the case?</p> <p>19 A. Where they are both in the same</p> <p>20 room.</p> <p>21 Q. Could you conduct a hearing</p> <p>22 with one in one room and one in the other and</p> <p>23 go back and forth?</p> <p>24 A. We could. We also are not</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 102</p> <p>1 confined by it taking place at the same time.  2 The hearing officer might meet with the  3 complainant on Tuesday and the respondent on  4 Thursday and we'll consider that a  5 continuation of the hearing.  6 Q. And when you pick a hearing  7 officer -- by you I mean your office -- I know  8 you said you have a list of people, is there  9 any guidelines that you follow to first -- I'm  10 sorry. Let me start over again without  11 stuttering. Is there any guidelines that you  12 follow to make sure that a prospective hearing  13 officer doesn't really know one party as  14 opposed to another party, you know, not to  15 have any bias or anything?  16 A. We don't out of process, like,  17 review every student and every hearing officer  18 for every case. We couldn't do that. We rely  19 on the student to -- the student's notified  20 who that hearing officer is going to be in  21 their notice and if the student had an issue  22 with that hearing officer then they can voice  23 that to community standards and we would  24 review that concern. When it's more serious,</p>	<p style="text-align: right;">Page 104</p> <p>1 students who have, you know, contacted the  2 office of community standards and said, "I  3 prefer not to meet with this person."  4 Q. Said what?  5 A. Said, "I prefer not meet with  6 this person." It rarely comes up. And we  7 rely on our professional staff, and they are  8 solid professionals, to say "I'd rather not  9 meet with this person based on the connection  10 that I have with him or her."  11 Q. And then you honor that?  12 A. And we honor that.  13 Q. And if somebody on that list  14 would indicate that he or she might feel  15 uncomfortable in dealing with one of those  16 students or the situation, then you would  17 honor that also?  18 A. We would.  19 Q. Have you in the last five  20 years, has -- and, again, nonsexual serious  21 offenses, in the last five years have you  22 had any -- have you had students object to the  23 hearing officer that's been assigned, that you  24 can recall as you sit here?</p>
<p style="text-align: right;">Page 103</p> <p>1 right, there is the obvious -- I mean, we  2 expect our hearing officers and we actually go  3 through in our training of, don't go down that  4 path by scheduling the hearing with a student  5 if you do have that connection with one. And  6 so we talk about what the appearance of --  7 Q. Impropriety?  8 A. -- impropriety could be, even  9 if there was absolutely no impropriety,  10 appearance of such. And so if a hearing  11 officer was advising a student group and the  12 student was a president of the student group,  13 that's not a situation currently, but we would  14 just not have that hearing officer hear that  15 case.  16 Q. Okay. So, if I understand  17 correctly, you advise each student who the  18 hearing officer is and you want to hear from  19 them if they have any objection, right?  20 A. Right.  21 Q. And what do they do, have, like  22 have 24 hours to object?  23 A. I don't know specifically what  24 we say in the handbook. But we have had</p>	<p style="text-align: right;">Page 105</p> <p>1 A. Not that I can recall as I sit  2 here.  3 Q. So any objection, assuming that  4 it took place in the last five years, would  5 have been a rare occasion, as far as you can  6 remember?  7 A. Yes.  8 Q. Then after the finding is made  9 on these nonsexual serious cases, have you had  10 students appeal, claiming that the hearing  11 officer was biased in some way?  12 A. Yes.  13 Q. And how often does that occur?  14 A. Frequently with an appeal  15 students frame it as a bias when it's really a  16 disagreement with the decision and they have  17 not articulated a true bias. But that is a  18 place where we find students say, "I am not  19 happy with this outcome. There was bias by  20 this person, this person, this process." So  21 we do see that in appeals.  22 Q. Have you ever had occasion in  23 the last five years that you can recall where  24 on appeal a claim of bias is made and for any</p>

27 (Pages 102 - 105)

## CONFIDENTIAL

<p style="text-align: right;">Page 106</p> <p>1 reason the appeal board agreed with them and  2 gave a new hearing?  3 MR. PICCERILLI: Objection.  4 THE WITNESS: Yes.  5 BY MR. SCHWABENLAND:  6 Q. How often has that happened?  7 A. I am recalling one instance,  8 but that doesn't mean there's only been one.  9 Q. And the one that you recall,  10 can you tell me when that occurred and what  11 the circumstances of that were? I don't want  12 you to name names, but --  13 A. So when it occurred -- I am  14 doing the math in my head -- probably four  15 years ago.  16 Q. Okay. That's your best  17 estimate?  18 A. Best estimate. And it was,  19 again, what I was talking about, I actually  20 don't remember the nature of the case, but I  21 do remember it was a conflict between two  22 parties. And, to my example earlier, there  23 was a student who was advised by the hearing  24 officer at the time and that was learned</p>	<p style="text-align: right;">Page 108</p> <p>1 way?  2 A. Sometimes.  3 Q. And who then would be assigned  4 to investigate that matter, somebody in OCS?  5 A. No -- well, it could be. We  6 have a public safety and security investigator  7 who serves a formal investigative role. But  8 if you are looking at a broad definition of  9 investigation, we might -- OCS or a hearing  10 officer or somebody in residence life might  11 follow up with a student for some clarifying  12 points or follow up with an RA who wrote a  13 report for some clarifying points. You could  14 see that within the spirit of investigation,  15 but we don't call that -- them investigating  16 per se, but we have a public safety  17 investigator who might truly in a traditional  18 investigative approach.  19 Q. You said public safety. Do  20 they write reports?  21 A. They do.  22 Q. And these would be submitted to  23 OCS, then?  24 A. Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 through the appeal and the appeal panel said,  2 "You know what, we are better off. Let's have  3 a new hearing officer take a look at that  4 outcome." I don't know the specifics of it,  5 but I do recall there was one instance -- and  6 the board did not determine that there was a  7 bias. They determined that there was  8 sufficient information raised to warrant  9 another hearing officer take a look at things.  10 Q. In all fairness, right?  11 A. In that instance.  12 Q. I forgot to ask you one thing.  13 Again, I'm looking at the protocol or  14 procedure for nonsexual claims that are  15 serious enough to warrant some type of pre--  16 I'm sorry -- prehearing meeting, fair enough?  17 A. Yes.  18 Q. When a claim is made in these  19 circumstances but before the formal notice of  20 charge against them comes out, is anybody in  21 OCS or at the university assigned to  22 investigate the matter to see what really went  23 on here and see maybe whether you want to go  24 forward to a notice or handle it some other</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. But after the formal notice of  2 a charge or charges come out then starts the  3 process to go to a hearing, right?  4 A. Right.  5 Q. Once a hearing is conducted, if  6 you as the hearing officer -- again, in this  7 scenario, again, nonsexual serious offenses --  8 if you as a hearing officer felt that  9 additional investigation or testimony was  10 necessary, would you have that freedom?  11 A. Yes.  12 Q. And then I take it a hearing  13 officer then has to write a report?  14 A. No.  15 Q. I'm sorry. After the hearing  16 takes place does the hearing officer render  17 findings?  18 A. Yes.  19 Q. And, again, I think you would  20 apply the preponderance of evidence and more  21 likely than not to have either occurred or not  22 occurred or you can't determine, right?  23 A. Yes.  24 Q. So it's a possibility of three</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 110</p> <p>1 decisions, either responsible, undetermined, 2 or nonresponsible, right? 3 A. Yes. 4 Q. Do you then have an outcome 5 meeting with -- does the hearing officer then 6 have an outcome meeting with both the 7 complainant and respondent at different times? 8 A. Not always. 9 Q. Okay. If it's favorable, that 10 the respondent is culpable in some way, what 11 is the next step then? 12 MR. PICCERILLI: Objection to 13 form. 14 THE WITNESS: Right. I 15 wouldn't call it favorable -- 16 BY MR. SCHWABENLAND: 17 Q. I'm sorry. 18 A. -- in any sense. 19 Q. I meant responsible. Thank 20 you. I wouldn't call it favorable either. 21 A. Can you repeat that question? 22 Q. Sure. Let's start over again. 23 If the findings are -- if the hearing officer 24 concludes that the respondent is</p>	<p style="text-align: right;">Page 112</p> <p>1 appropriate sanctions, then that's not 2 reversed, then, by anybody in OCS? 3 MR. PICCERILLI: Hold on a 4 second. Can I hear that question 5 back, please? 6 --- 7 (Whereupon, the court reporter 8 read back from the record.) 9 --- 10 MR. PICCERILLI: Objection to 11 form. 12 BY MR. SCHWABENLAND: 13 Q. Can you answer that or do you 14 want me to rephrase it? 15 A. Yes. We would not reverse any 16 decision made by another hearing officer. 17 Q. And then the appeal process, 18 assuming that you find responsibility, what 19 would be the grounds that that student would 20 have to appeal in that type of case? 21 A. I don't want to misstate them. 22 I don't have the appeal process committed to 23 memory. 24 Q. Okay.</p>
<p style="text-align: right;">Page 111</p> <p>1 responsible -- I think I said that right -- 2 what is the next step? 3 A. Well, a hearing officer would 4 enter a private deliberation to determine what 5 the appropriate sanctions are and then deliver 6 those sanctions and that outcome to the 7 respondent. 8 Q. Would the hearing officer be 9 the decider of responsibility as well as -- 10 and if the respondent is responsible then 11 appropriate sanctions? 12 A. Yes. 13 Q. Is that reviewed by anybody in 14 OCS if you're not the hearing officer? 15 A. We review it not in terms of 16 approving outcome or decision. We review 17 every case that's been closed by a hearing 18 officer for procedural review, to make sure 19 that the process was followed and the 20 appropriate letters were sent to the students, 21 but we don't review for approval. 22 Q. So once the hearing officer 23 makes the decision, then, as to responsibility 24 and in the case of responsibility then</p>	<p style="text-align: right;">Page 113</p> <p>1 A. But there are grounds outlined 2 within the handbook of an appeal submission. 3 Q. It's my understanding there's 4 two grounds. 5 A. Again, I don't have them 6 committed to memory. 7 Q. Okay. Do any of those grounds 8 consist that -- of the fact that the 9 respondent if found responsible cannot appeal 10 on the grounds that there was insufficient 11 evidence to support that finding, or it can? 12 A. Again, I don't want to -- 13 without reviewing it -- if you have the 14 appeals process, I am happy to look at it, but 15 I don't have it committed to memory. 16 Q. Fair enough. I will show it to 17 you. I am not trying to hold it back. 18 A. Okay. 19 MR. SCHWABENLAND: Why don't we 20 take a break? 21 THE VIDEOGRAPHER: This 22 completes DVD number one. The time is 23 12:15. We're going off the record. 24 ---</p>



## CONFIDENTIAL

<p style="text-align: right;">Page 114</p> <p>1 (Off the record)</p> <p>2</p> <p>3 THE VIDEOGRAPHER: On the</p> <p>4 record. Beginning of DVD number two.</p> <p>5 The time is 12:32. Beginning the</p> <p>6 questioning.</p> <p>7 BY MR. SCHWABENLAND:</p> <p>8 Q. Mr. Bordak, I just have a</p> <p>9 couple of follow-ups here. You mentioned that</p> <p>10 sometimes there is a single hearing officer,</p> <p>11 other times there is a panel of three, whether</p> <p>12 it's board or faculty and -- I'm sorry --</p> <p>13 whether it's student -- I'm sorry -- whether</p> <p>14 it's peer, board, or whether it's composed of</p> <p>15 faculty and students. Did I say that</p> <p>16 correctly?</p> <p>17 A. Yes.</p> <p>18 Q. In the case of three people</p> <p>19 hearing it, hearing the evidence and then</p> <p>20 making a decision, does the decision have to</p> <p>21 be unanimous or can it be a split two-to-one</p> <p>22 vote, if you know?</p> <p>23 A. I don't want to misspeak, so I</p> <p>24 don't know with certainty.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Okay.</p> <p>2 A. Beyond that, I don't know.</p> <p>3 Q. Do you know if she spearheaded</p> <p>4 it or she was just the person involved in</p> <p>5 that?</p> <p>6 MR. PICCERILLI: Objection to</p> <p>7 the form.</p> <p>8 THE WITNESS: She was just a</p> <p>9 person involved. She did not</p> <p>10 spearhead it.</p> <p>11 BY MR. SCHWABENLAND:</p> <p>12 Q. And do you know if Dr. Perry</p> <p>13 was?</p> <p>14 MR. PICCERILLI: Was what?</p> <p>15 MR. SCHWABENLAND: Involved in</p> <p>16 putting that together.</p> <p>17 THE WITNESS: I can't say with</p> <p>18 certainty.</p> <p>19 BY MR. SCHWABENLAND:</p> <p>20 Q. Okay. Do you have any belief</p> <p>21 one way or another?</p> <p>22 MR. SCHWABENLAND: Objection to</p> <p>23 form.</p> <p>24 THE WITNESS: I believe that</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. Okay. But that would be in the</p> <p>2 manual for --</p> <p>3 A. That would be in the manual or</p> <p>4 the handbook.</p> <p>5 Q. Okay. Let me ask you this:</p> <p>6 Have you known in a panel of three one to</p> <p>7 dissent?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 A. But there is -- so on the peer</p> <p>11 review -- I don't want to misspeak what the</p> <p>12 community standards were, but the peer review</p> <p>13 board I do know that it's not unanimous. They</p> <p>14 are a three-person board, so a two-to-one</p> <p>15 would be an outcome.</p> <p>16 Q. Okay. You said with regard to</p> <p>17 the sexual misconduct policy, the formation of</p> <p>18 it, you weren't involved in putting that</p> <p>19 together, right?</p> <p>20 A. Correct.</p> <p>21 Q. Do you know who was involved in</p> <p>22 putting that together?</p> <p>23 A. I know for certain that my</p> <p>24 boss, Dr. White, was.</p>	<p style="text-align: right;">Page 117</p> <p>1 she would be in her capacity as Title</p> <p>2 IX coordinator.</p> <p>3 BY MR. SCHWABENLAND:</p> <p>4 Q. And Dr. Anderson, would he have</p> <p>5 been involved in that capacity?</p> <p>6 A. I'm not sure.</p> <p>7 Q. And then there is counsel for</p> <p>8 the university. Would she have been involved?</p> <p>9 A. I do not know.</p> <p>10 Q. Okay. So, other than Dr.</p> <p>11 White, you can't state anybody else was?</p> <p>12 A. Not with certainty.</p> <p>13 Q. Okay. Can you tell me when it</p> <p>14 started to be discussed about either the need</p> <p>15 or the decision to formulate a sexual</p> <p>16 misconduct policy, how that arose?</p> <p>17 A. I can't answer that.</p> <p>18 Q. Okay. Let me ask you some</p> <p>19 cases here, if I can. Are you familiar with</p> <p>20 the Harris case?</p> <p>21 A. I am.</p> <p>22 Q. And Harris, that was in suit --</p> <p>23 that's my phone going off. I apologize to</p> <p>24 everybody. Let me turn that off here. Do you</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 118</p> <p>1 recall what year that was?</p> <p>2 A. I do not.</p> <p>3 Q. And that was in suit. Do you</p> <p>4 know if it is still in suit or you don't know?</p> <p>5 A. I don't know.</p> <p>6 Q. I take it you weren't involved</p> <p>7 in giving any testimony in that suit?</p> <p>8 A. I was not.</p> <p>9 Q. Okay. The Harris case, how are</p> <p>10 you familiar with it?</p> <p>11 A. I knew that it happened. I</p> <p>12 knew that there was a matter that was sexual</p> <p>13 in nature, sexual -- it was not sexual</p> <p>14 misconduct policy. That's really all. I was</p> <p>15 not an administrative hearing officer</p> <p>16 investigator for that.</p> <p>17 Q. Did you say it was or it wasn't</p> <p>18 under the sexual misconduct policy?</p> <p>19 A. It was not under the sexual</p> <p>20 misconduct policy as an investigator.</p> <p>21 Q. Do you know what the offense</p> <p>22 was claimed?</p> <p>23 A. I don't.</p> <p>24 Q. You weren't involved with the</p>	<p style="text-align: right;">Page 120</p> <p>1 MR. PICCERILLI: Objection to</p> <p>2 form.</p> <p>3 THE WITNESS: In terms of the</p> <p>4 institutional --</p> <p>5 BY MR. SCHWABENLAND:</p> <p>6 Q. Responsible, not responsible?</p> <p>7 A. I know that he was found</p> <p>8 responsible.</p> <p>9 Q. Do you know what -- he was</p> <p>10 found responsible for what?</p> <p>11 A. I do not know.</p> <p>12 Q. Did the Harris case cause your</p> <p>13 office or you or your office to review the</p> <p>14 procedures which were carried out?</p> <p>15 A. No.</p> <p>16 MR. PICCERILLI: Can we go off</p> <p>17 the video record for one moment?</p> <p>18 THE VIDEOGRAPHER: Off the</p> <p>19 video record, 12:38.</p> <p>20 MR. PICCERILLI: I know that</p> <p>21 this to some extent is a matter of</p> <p>22 public record. There are FERPA</p> <p>23 concerns here. You are using the name</p> <p>24 and we know that the name has been</p>
<p style="text-align: right;">Page 119</p> <p>1 investigation of it, were you?</p> <p>2 A. I was not.</p> <p>3 Q. Do you know if it went to a</p> <p>4 hearing?</p> <p>5 A. I believe that it went to a</p> <p>6 hearing.</p> <p>7 Q. And do you know who the hearing</p> <p>8 officer was on the case?</p> <p>9 A. I do not know.</p> <p>10 Q. Did you have any part to play</p> <p>11 in reviewing the decision of the hearing</p> <p>12 officer?</p> <p>13 A. No.</p> <p>14 Q. Do you know if the office of</p> <p>15 community standards was involved with that</p> <p>16 case at all?</p> <p>17 A. I can't say with certainty.</p> <p>18 Q. Do you know what the claim was</p> <p>19 by Harris in the lawsuit?</p> <p>20 A. I do not know.</p> <p>21 Q. Do you know that Harris made an</p> <p>22 investigation -- I'm sorry -- do you know what</p> <p>23 the finding was against Harris, whether it was</p> <p>24 for or against him?</p>	<p style="text-align: right;">Page 121</p> <p>1 used in litigation. But I just wanted</p> <p>2 to alert you to the fact that we are</p> <p>3 not waiving any FERPA-related type of</p> <p>4 issue that might apply here.</p> <p>5 MR. SCHWABENLAND: That's fine.</p> <p>6 Let me say this, that I am acting</p> <p>7 under our agreement of all counsel as</p> <p>8 well as the court-approved order that</p> <p>9 everything is to be kept confidential,</p> <p>10 so --</p> <p>11 MS. SCHIMELFENIG: I am going</p> <p>12 to speak on behalf of the university</p> <p>13 here, not Bill Bordak. My client, the</p> <p>14 university, has an obligation under</p> <p>15 FERPA. The only reason that the</p> <p>16 university is not objecting to the use</p> <p>17 of the name of the student in this</p> <p>18 matter is, A, because it's a matter of</p> <p>19 public record to the extent that</p> <p>20 matters are addressed in the federally</p> <p>21 filed complaint and, B, to the extent</p> <p>22 they relate to that complaint there</p> <p>23 will be no objection. But, as counsel</p> <p>24 in this case has said, that if there</p>



## CONFIDENTIAL

<p style="text-align: right;">Page 122</p> <p>1 is any kind of FERPA morph over, if  2 you will, to areas that are not a  3 matter of public record the university  4 will ask its outside counsel to assert  5 an objection to that area of inquiry,  6 regardless of the confidentiality of  7 this record. That is not the  8 determinative factor. The  9 determinative factor is the prior  10 written consent of the student whose  11 name is being used. The university  12 cannot waive that. You cannot waive  13 that. Mr. Bordak cannot waive that.  14 I just want to be clear on that.  15 MR. SCHWABENLAND: Except  16 Harris gave his own name.  17 MS. SCHIMELFENIG: We agree. I  18 mean, both outside counsel agrees. I,  19 as general counsel for my client, the  20 university, agrees. But we just  21 thought it was important as a matter  22 of record that you understand where we  23 won't agree.  24 MR. SCHWABENLAND: Okay. And</p>	<p style="text-align: right;">Page 124</p> <p>1 community standards?  2 A. Correct.  3 Q. Has anybody since come into the  4 office of community standards?  5 A. Yes.  6 Q. And who has come in?  7 A. Her name is Courtney Laganke.  8 Q. How do you spell her --  9 A. L-A-G-A-N-K-E.  10 Q. And has she assumed Emily's  11 role?  12 A. It's a revised role.  13 Q. And what's her title?  14 A. The community standards  15 manager.  16 Q. And what does she do as  17 community standards manager?  18 A. It's more operational. So  19 she's a hearing officer, but she manages the  20 operations of the office. It's a split  21 position, where she also works for residence  22 life.  23 Q. Is there anyone else involved  24 with -- or has there been anybody else</p>
<p style="text-align: right;">Page 123</p> <p>1 if need be we can just call the judge.  2 MS. SCHIMELFENIG: I certainly  3 hope not. It's pretty  4 straightforward. Thank you.  5 THE VIDEOGRAPHER: Back on  6 video record, 12:40.  7 BY MR. SCHWABENLAND:  8 Q. If the office of community  9 standards didn't do the investigation, who  10 did, then?  11 A. I am not saying that the office  12 of community standards didn't. I was not  13 director at the time. I was not involved with  14 it. So I can't speak to the specifics.  15 Q. Okay. And I am jumping ahead  16 here. I had asked you earlier that for the  17 2017 up until April of 2018, it was you and  18 Emily Forte in the office of community  19 standards, right?  20 A. Can you repeat the dates that  21 you said?  22 Q. Sure. For the school year 2017  23 to around April of 2018, when Emily left, it  24 was you and Emily Forte in the office of</p>	<p style="text-align: right;">Page 125</p> <p>1 involved with community standards since 2017  2 school year?  3 A. Our administrative assistant,  4 on the secretarial level.  5 Q. Clerical?  6 A. Clerical, yes.  7 Q. And I think I may have asked  8 you this. I need to know. As a result of the  9 claim or the Harris case and the subsequent  10 lawsuit, do you know if anybody investigated  11 the procedures to see if things were done  12 right or wrong?  13 MR. PICCERILLI: I am going to  14 object to that to the extent it might  15 be attorney/client privilege or  16 attorney work product.  17 BY MR. SCHWABENLAND:  18 Q. I don't want what the attorney  19 said to you or anything else. I just want to  20 know if there's been any evaluation at the  21 university that you're aware of to evaluate  22 whether or not there was some basis to that  23 claim or whether certain standards should be  24 changed at all?</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 126</p> <p>1 A. Not that I am aware of.</p> <p>2 Q. Did anybody say to you at the</p> <p>3 university that they needed -- that the school</p> <p>4 needed to look at the activities in the Harris</p> <p>5 case to determine if any changes need to be</p> <p>6 made?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. Powell, are you familiar with</p> <p>9 the Powell case?</p> <p>10 A. Yes.</p> <p>11 Q. And how are you familiar with</p> <p>12 that?</p> <p>13 A. I am director of the office of</p> <p>14 community standards, so I'm familiar with that</p> <p>15 case.</p> <p>16 Q. Okay. And so you're familiar</p> <p>17 with it. What about that case are you</p> <p>18 familiar with?</p> <p>19 A. I'm familiar with him having</p> <p>20 matters before the office of community</p> <p>21 standards as violations of policy and the</p> <p>22 ultimate outcome of the most recent case was</p> <p>23 an expulsion from the university.</p> <p>24 Q. Expulsion. He was expelled?</p>	<p style="text-align: right;">Page 128</p> <p>1 what we said before regarding the</p> <p>2 Harris case, that applies as well to</p> <p>3 the Powell case. We can go back on.</p> <p>4 THE VIDEOGRAPHER: Back on the</p> <p>5 video, 12:45.</p> <p>6 BY MR. SCHWABENLAND:</p> <p>7 Q. Were you involved with the</p> <p>8 Powell case at any stage, either to</p> <p>9 investigate it -- I know you weren't the</p> <p>10 hearing officer, but the evaluation of the</p> <p>11 findings or the outcome or any appeal process?</p> <p>12 A. Administratively, as the</p> <p>13 director of community standards, I ensured</p> <p>14 that we were true with process on those</p> <p>15 pieces, but I was -- the assistant director --</p> <p>16 there was an investigator who investigated the</p> <p>17 conduct and the assistant director, Ms. Egan,</p> <p>18 issued the sanction. The assistant director,</p> <p>19 Ms. Egan, issued the sanctions. So I didn't</p> <p>20 play those roles, but administratively I was</p> <p>21 involved in it.</p> <p>22 Q. What was he found responsible</p> <p>23 for, what violation?</p> <p>24 A. I can't recall specifically.</p>
<p style="text-align: right;">Page 127</p> <p>1 A. Right.</p> <p>2 Q. And were you the hearing</p> <p>3 officer on the case?</p> <p>4 A. I was not.</p> <p>5 Q. Do you know who was?</p> <p>6 A. Yes.</p> <p>7 Q. And who was it?</p> <p>8 A. The assistant director at the</p> <p>9 time, Lori Egan.</p> <p>10 Q. Lori what?</p> <p>11 A. Egan, E-G-A-N.</p> <p>12 Q. Assistant director --</p> <p>13 A. Of community standards.</p> <p>14 Q. I'm sorry?</p> <p>15 A. Of community standards.</p> <p>16 Q. Okay. And when about was this?</p> <p>17 A. A few years ago. I don't know</p> <p>18 exactly when.</p> <p>19 Q. Was --</p> <p>20 MR. PICCERILLI: Let's go off</p> <p>21 the record.</p> <p>22 THE VIDEOGRAPHER: Off the</p> <p>23 video record, 12:44.</p> <p>24 MR. PICCERILLI: Just repeating</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. Was it a sexual misconduct</p> <p>2 charge?</p> <p>3 A. Again, I can't recall</p> <p>4 specifically.</p> <p>5 Q. Is Ms. Egan still there at the</p> <p>6 school?</p> <p>7 A. She is not.</p> <p>8 Q. And do you know whereabouts she</p> <p>9 lives?</p> <p>10 A. I do not know.</p> <p>11 Q. When did Ms. Egan leave?</p> <p>12 A. I can't recall specifically.</p> <p>13 Two years ago, three years ago, maybe.</p> <p>14 Q. If I wanted to find out or see</p> <p>15 the documentation pertaining to the procedure</p> <p>16 that was followed, the findings, how would I</p> <p>17 go about finding that information?</p> <p>18 A. You would not have access to</p> <p>19 that information, as it's part of a student</p> <p>20 record. The student would, so --</p> <p>21 Q. But I have subpoena power.</p> <p>22 A. I would advise anyone looking</p> <p>23 for that to contact our general counsel about</p> <p>24 access to it.</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 130</p> <p>1 Q. But the documents themselves, 2 would they be on file in the office of 3 community standard? 4 A. Within the student record. We 5 maintain the student disciplinary records. 6 Q. Okay. Do you know if that case 7 was handled as a sexual misconduct policy? 8 A. Yes. Yes, it was investigated. 9 Q. But do you have any 10 understanding that he wasn't found responsible 11 under the sexual misconduct policy but it was 12 under some type of anti-harassment policy? 13 A. Again, I can't speak to the 14 specifics. 15 Q. Okay. As a result of that case 16 and ultimate matter now in trial, now in 17 litigation, did your office seek to evaluate 18 or examine or review the procedures that were 19 followed in that case? 20 A. No, not directly related to 21 that matter. 22 Q. Are you familiar with claims 23 made about the girls' softball team, claims 24 made against the girls' softball team at St.</p>	<p style="text-align: right;">Page 132</p> <p>1 caution -- under FERPA let me just 2 caution the witness that the names of 3 those complainants have not been 4 revealed, even in the litigation, 5 so -- or if there was litigation and 6 so he should respect that and not 7 disclose their names if he should 8 know. 9 MR. SCHWABENLAND: Okay. 10 BY MR. SCHWABENLAND: 11 Q. I'll represent to you that 12 there is a Jane Doe 1 and a Jane Doe 2 against 13 the university. So we'll call them Jane Doe 1 14 and Jane Doe 2. Are you familiar with the 15 fact that there were several complaints 16 made -- there were complaints made by several 17 of the girls on the softball team about the 18 actions of its coaching staff as well as its 19 girls, players? 20 A. I was not specifically aware of 21 allegations against coaching staff, that's not 22 under the purview of my office, but against 23 other students, yes. 24 Q. Okay. So did you or anybody</p>
<p style="text-align: right;">Page 131</p> <p>1 Joe's University? 2 A. Can you be more specific? 3 Q. Sure. There was a claim of 4 improper activity going on among the girls' 5 softball team, perhaps involving the coaches, 6 perhaps not involving the coaches, but claims 7 of sexual activity and/or harassment? 8 A. Yes. I am aware. 9 Q. Okay. So when did you become 10 aware of that? 11 A. I can't recall specifics. We 12 are talking a couple of years ago. 13 Q. Okay. Is that during the time 14 period that the sexual misconduct policy has 15 been in effect? 16 A. That was, as I recall, during 17 the time that the interim sexual misconduct 18 policy was in effect. 19 Q. So who was making those claims 20 against the girls' softball team? 21 A. Again, I can't recall specifics 22 years later. 23 Q. Can you recall anything? 24 MR. PICCERILLI: Let me just</p>	<p style="text-align: right;">Page 133</p> <p>1 else from your office investigate this matter? 2 A. Yes. 3 Q. Who investigated it? 4 A. Again, this is a couple of 5 years ago and I want you to understand that 6 it's hard to remember details with specificity 7 years later. As I recall, there was an 8 investigation by our public safety 9 investigator and then there was a subsequent 10 investigation for conduct implicated by the 11 sexual misconduct policy, really the 12 recollection I have in terms of the 13 investigation. 14 Q. Who was the public safety 15 investigator who investigated? 16 A. I don't recall. 17 Q. Did the public safety 18 investigator report his or her findings to 19 your office? 20 A. Yes. 21 Q. And so there would be an 22 incident report? 23 A. Yes. 24 Q. And would there be more than</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 134</p> <p>1 one incident report?</p> <p>2 A. I can't recall.</p> <p>3 Q. Do you know if that was based</p> <p>4 upon interviews of the various girls on the</p> <p>5 team?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know how many girls were</p> <p>8 interviewed?</p> <p>9 A. I do not know.</p> <p>10 Q. But the incident report would</p> <p>11 reflect whatever interviews were conducted?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know if any of the</p> <p>14 coaching staff was interviewed by the public</p> <p>15 safety?</p> <p>16 A. I do not know.</p> <p>17 Q. And as you sit here you don't</p> <p>18 know, if there's a claim against an employee</p> <p>19 of the school or somebody on staff, you don't</p> <p>20 know how that's handled?</p> <p>21 A. No, not specifically.</p> <p>22 Q. How about not specifically?</p> <p>23 A. No. I mean --</p> <p>24 Q. Generally?</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. Do you know if it was in</p> <p>2 connection with the claims that were being</p> <p>3 made and her management or not management of</p> <p>4 the team?</p> <p>5 A. I do not.</p> <p>6 Q. So you don't know if she was</p> <p>7 penalized? You just know that at some point,</p> <p>8 what, she either resigned or was discharged?</p> <p>9 MR. PICCERILLI: Objection.</p> <p>10 THE WITNESS: I just know that</p> <p>11 she's not ...</p> <p>12 BY MR. SCHWABENLAND:</p> <p>13 Q. So let's get back to -- you</p> <p>14 know you have a public safety report. Do you</p> <p>15 know if you have more than one or just one?</p> <p>16 A. I do not know.</p> <p>17 Q. Okay. But all this would be on</p> <p>18 file at the office of -- at your office,</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. And who, then, investigated it</p> <p>22 from your office?</p> <p>23 A. Nobody in our office</p> <p>24 investigated it.</p>
<p style="text-align: right;">Page 135</p> <p>1 A. There's a range of conduct and</p> <p>2 some might be handled at the department level,</p> <p>3 some might be handled at the divisional level,</p> <p>4 some might be through the human resources.</p> <p>5 It's not my responsibility to manage that</p> <p>6 process, so I'm not totally familiar with what</p> <p>7 it is.</p> <p>8 Q. Okay. The name of the coaching</p> <p>9 staff or the coaches at the time, what were</p> <p>10 they? What were those names? They are not</p> <p>11 students, so you can reveal them.</p> <p>12 A. So the only one that I know was</p> <p>13 the head coach, Terri Adams, and I only know</p> <p>14 her name from knowing the head coaches of the</p> <p>15 teams on campus.</p> <p>16 Q. Did you ever meet Ms. Adams?</p> <p>17 A. I did.</p> <p>18 Q. Do you know if Ms. Adams is</p> <p>19 still there?</p> <p>20 A. She is not.</p> <p>21 Q. And do you know when she left?</p> <p>22 A. I do not.</p> <p>23 Q. Do you know why she left?</p> <p>24 A. I do not.</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Okay. So who followed up with</p> <p>2 the investigation after public safety issued</p> <p>3 the report?</p> <p>4 A. As I recall, there was an</p> <p>5 administrative hearing for nonsexual</p> <p>6 misconduct policy violations that I was the</p> <p>7 hearing officer for. I don't recall specifics</p> <p>8 on that.</p> <p>9 Q. Okay. So you were the hearing</p> <p>10 officer and it was placed into the</p> <p>11 nonsexual --</p> <p>12 A. There were two simultaneous</p> <p>13 tracks. One was -- because there was multiple</p> <p>14 conduct, as I recall, that was complained. So</p> <p>15 the sexual misconduct related conduct was</p> <p>16 addressed through the sexual misconduct policy</p> <p>17 and the nonsexual misconduct policy violations</p> <p>18 were addressed through an administrative</p> <p>19 hearing officer, which was myself. So we had</p> <p>20 concurrent processes, very independent,</p> <p>21 separate processes happening at once.</p> <p>22 Q. So who was the investigator on</p> <p>23 the sexual misconduct policy charges?</p> <p>24 A. I don't want to misspeak, so</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 138</p> <p>1 I'm not sure.</p> <p>2 Q. Who do you think it is?</p> <p>3 MR. PICCERILLI: Objection.</p> <p>4 That's asking for a guess.</p> <p>5 BY MR. SCHWABENLAND:</p> <p>6 Q. I don't want you to guess.</p> <p>7 A. I can't say with certainty, so</p> <p>8 I prefer not to say.</p> <p>9 Q. How many people form that</p> <p>10 possibility?</p> <p>11 A. Three or four at the time.</p> <p>12 Q. Was Emily Malloy involved with</p> <p>13 the investigation of that?</p> <p>14 A. At that time, Elizabeth Malloy</p> <p>15 was.</p> <p>16 Q. I'm sorry. I said Emily. I</p> <p>17 apologize.</p> <p>18 A. I can't say with certainty on</p> <p>19 the spot right here, two years later, having</p> <p>20 not looked at these files who the investigator</p> <p>21 was.</p> <p>22 Q. Okay. What things fell within</p> <p>23 the category of sexual misconduct policy?</p> <p>24 A. Again, I can't --</p>	<p style="text-align: right;">Page 140</p> <p>1 redact any names of students, but --</p> <p>2 do you want to go ahead and talk to</p> <p>3 counsel?</p> <p>4 MR. PICCERILLI: I don't know</p> <p>5 that we have an agreement today, but</p> <p>6 we will get back to you on this. I</p> <p>7 mean, we don't have them here today,</p> <p>8 in any event, so --</p> <p>9 MR. SCHWABENLAND: I know, but</p> <p>10 they have been asked for.</p> <p>11 MR. PICCERILLI: I don't know</p> <p>12 what there is.</p> <p>13 MR. SCHWABENLAND: Do you want</p> <p>14 to go talk to counsel? Go ahead.</p> <p>15 MR. PICCERILLI: Are we on the</p> <p>16 video record? We shouldn't be.</p> <p>17 THE VIDEOGRAPHER: Off the</p> <p>18 record, 12:56.</p> <p>19 MR. PICCERILLI: Let me go talk</p> <p>20 to counsel.</p> <p>21 -- --</p> <p>22 (Whereupon, a recess was held</p> <p>23 from 12:56 p.m. to 1:01 p.m.)</p> <p>24 -- --</p>
<p style="text-align: right;">Page 139</p> <p>1 MR. PICCERILLI: I'm sorry.</p> <p>2 Objection to form.</p> <p>3 THE WITNESS: Again, I can't</p> <p>4 say with certainty what those</p> <p>5 violations were and I don't want to</p> <p>6 speak on the record.</p> <p>7 BY MR. SCHWABENLAND:</p> <p>8 Q. Well, there is -- sexual</p> <p>9 misconduct policy has certain violations that</p> <p>10 falls within that umbrella, right?</p> <p>11 A. Yes.</p> <p>12 Q. One would be sexual abuse?</p> <p>13 A. I don't know that we define it</p> <p>14 that way. I'd have to look at the actual</p> <p>15 policy. Again, I don't have these documents</p> <p>16 committed to memory, so I don't know exactly</p> <p>17 what the language is.</p> <p>18 Q. But you're the only one I can</p> <p>19 find out these documents from, so --</p> <p>20 A. Right. But I don't have them</p> <p>21 committed to memory. I'd be happy to --</p> <p>22 MR. SCHWABENLAND: Counsel, do</p> <p>23 we have an agreement that you will</p> <p>24 turn over these documents? You can</p>	<p style="text-align: right;">Page 141</p> <p>1 MR. PICCERILLI: I am not</p> <p>2 prepared to enter into some sort of</p> <p>3 agreement as we sit here today, Ed. I</p> <p>4 will consider this. I will determine</p> <p>5 whether or not we can produce anything</p> <p>6 further. You have to understand that</p> <p>7 we are talking here about a very</p> <p>8 defined group of female students who</p> <p>9 have not waived in any respect</p> <p>10 anything that FERPA may protect as</p> <p>11 private. So I will consider this and</p> <p>12 I will get back to you on it.</p> <p>13 MR. SCHWABENLAND: Do you know</p> <p>14 when, because --</p> <p>15 MR. PICCERILLI: When what?</p> <p>16 MR. SCHWABENLAND: -- we have</p> <p>17 asked for this material from the very</p> <p>18 beginning.</p> <p>19 MR. PICCERILLI: And we</p> <p>20 objected.</p> <p>21 MR. SCHWABENLAND: And we</p> <p>22 talked about this.</p> <p>23 MR. PICCERILLI: We talked</p> <p>24 about --</p>



## CONFIDENTIAL

<p style="text-align: right;">Page 142</p> <p>1 MR. SCHWABENLAND: Let me 2 finish. 3 MR. PICCERILLI: Okay. 4 MR. SCHWABENLAND: And it's 5 very clear it goes to how these 6 investigations were handled and so we 7 need to know that. There's also a 8 list that your office gave me, a list 9 of cases, without identifying the 10 specific students, handled from 2015 11 to 2018, just with the results, but we 12 don't know the underlying information 13 about what was the claim about. Now, 14 we asked for information on that also, 15 to say just identify each student case 16 by numerical number, don't identify 17 the student, and that way we get to 18 know what the investigation was about 19 and the underlying circumstances 20 without identifying anybody. We've 21 asked for that. Mr. Bordak is very 22 kind for coming here today, but he 23 doesn't have too much information 24 about that and this can only be gotten</p>	<p style="text-align: right;">Page 144</p> <p>1 for those reasons. I don't know that 2 every particular circumstance that was 3 involved in those cases is in any way 4 relevant here. In fact, this is a 5 litigation of this case, not of those 6 cases. And you may think that it's 7 appropriate to go back to analyze all 8 of the facts in those cases to try to 9 litigate this case, but I have to 10 disagree with that conclusion. 11 MR. SCHWABENLAND: Well, it's 12 pretty hard for you to disagree with 13 it, with all due respect, since you 14 have no idea what's in these files or 15 what they show. And you can't just 16 object on the grounds of irrelevant 17 because you have no idea whether or 18 not it's relevant or not relevant 19 until you look at these documents and 20 also I've had a chance to examine 21 these documents. That's why it's 22 producible in discovery. That's why 23 it's under a promise of 24 confidentiality. That's why I said</p>
<p style="text-align: right;">Page 143</p> <p>1 in the files. So I need to -- it's 2 one thing to say, "Well, we'll 3 consider it," but when are you going 4 to get back to me on that? Is it, 5 like, Monday, is it -- 6 MR. PICCERILLI: It could be. 7 I'm not sure. I have to consult with 8 counsel about that. I also have to 9 determine what's in the documents and 10 whether or not the documents could be 11 appropriately redacted to protect 12 identifying information. Another 13 thing, not only are there FERPA 14 protections here, but there are also 15 issues here of relevancy. I mean, 16 you're talking about the statistics -- 17 let me finish, I let you finish -- the 18 statistics list that we had provided 19 to you, because we provided that in 20 terms of, you know, which students 21 were investigated, which 22 investigations were handled by 23 Elizabeth Malloy, and what the 24 outcomes were and we gave that to you</p>	<p style="text-align: right;">Page 145</p> <p>1 you don't have to identify them by 2 name. But at least we have an 3 opportunity to review the underlying 4 facts concerning those cases and how 5 it was handled and compare to it 6 what's been going on. So I am going 7 to ask you this. I am going to ask 8 for -- I've asked for a number of 9 things. I'm going to ask you to let 10 me know Monday sometime about these 11 documents. I would like to see them, 12 because, as you know, I have 13 depositions of Ms. Malloy and 14 Ms. Perry and some other depositions 15 next week after we depose Ms. Roe on 16 Monday and sooner or later I have got 17 to have these documents. If not, then 18 we'll call the judge on Monday about 19 this. And that's the only way I can 20 see how to proceed. I can't just rely 21 upon you to say, "Yeah, I'll get back 22 to you," in all fairness. 23 MR. PICCERILLI: You have 24 stated what you have to say. I still</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 146</p> <p>1 don't see what the relevance of all of  2 these other matters are -- is, excuse  3 me. And I also want to restate what  4 has been stated before, that  5 regardless of the confidentiality  6 agreement in this case, that does not  7 override FERPA and its protections.  8 MR. SCHWABENLAND: Just so it's  9 clear, FERPA protects -- allows  10 confidentiality with regard to student  11 identification and information, right?  12 Or you'd rather not say?  13 MR. PICCERILLI: I would rather  14 not say right now.  15 MR. SCHWABENLAND: Fair enough.  16 MR. PICCERILLI: Plus, the  17 other thing is that, in  18 circumstances -- if there's going to  19 be a question of a disclosure of  20 student information, you have to have  21 consent from the student or at least  22 they have to be consulted at the  23 get-go.  24 MR. SCHWABENLAND: Okay. Let's</p>	<p style="text-align: right;">Page 148</p> <p>1 THE VIDEOGRAPHER: Back on the  2 record at 1:20.  3 BY MR. SCHWABENLAND:  4 Q. Mr. Bordak, we took a break.  5 And I started to say we'll take a look at the  6 SMP, we will call it. And the sexual  7 misconduct policy has a list of potential  8 violations. I will read it for the record:  9 Sexual assault, sexual harassment, sexual  10 exploitation, domestic violence, dating  11 violence, or stalking. Did I read that  12 correctly?  13 A. Yes.  14 Q. Is there any other type of  15 sexual offense that would be included in that  16 sexual misconduct policy that you're aware  17 that is not on there?  18 A. I think -- I don't know that  19 the title is meant to be exhaustive. There's  20 conduct defined within the policy.  21 Q. Okay. So then we get back to  22 the girls' softball team at the university.  23 You said it took two tracks. One was the SMP  24 and the other was the nonsexual offenses that</p>
<p style="text-align: right;">Page 147</p> <p>1 go back on.  2 THE VIDEOGRAPHER: Back on the  3 record, 1:07.  4 BY MR. SCHWABENLAND:  5 Q. I think I was about to show you  6 the sexual misconduct policy. I don't have to  7 identify it by exhibit. But the sexual  8 misconduct policy --  9 MR. PICCERILLI: You don't have  10 the Bates stamped copy?  11 MR. SCHWABENLAND: I can find  12 it.  13 MR. PICCERILLI: Well, I would  14 rather have the Bates, because it  15 would be easier to refer to certain  16 pages. I'm sorry. Are we off the  17 video record?  18 MR. SCHWABENLAND: Let's go off  19 the camera.  20 THE VIDEOGRAPHER: Off the  21 record, 1:08.  22 ---  23 (Off the record)  24 ---</p>	<p style="text-align: right;">Page 149</p> <p>1 you handled as a hearing officer?  2 A. Yes.  3 Q. Okay. So I had asked you who  4 did the investigation for the SMP and you  5 indicated you weren't sure or you didn't know?  6 A. Correct.  7 Q. Can you boil down to one of two  8 or three people at that time?  9 A. It's my recollection we were  10 working with Elizabeth Malloy, Andrew Shapren,  11 and somebody named Rose, I forget her last  12 name.  13 Q. And Andrew and Rose, were they  14 in the same firm as Ms. Malloy?  15 A. They were.  16 Q. Do you know what firm they were  17 associated with at the time in 2015?  18 A. Buchanan Ingersoll.  19 Q. Did you know Ms. Malloy?  20 A. Professionally, yes.  21 Q. That's what I meant.  22 A. Yes.  23 Q. I'm sorry. Had she reviewed  24 cases -- when did she start reviewing cases</p>

38 (Pages 146 - 149)

## CONFIDENTIAL

<p style="text-align: right;">Page 150</p> <p>1 for the university, if you know?</p> <p>2 A. I don't know the first, but it</p> <p>3 would have been shortly after the</p> <p>4 implementation of the policy in January of</p> <p>5 2015.</p> <p>6 Q. Okay. So was she the primary</p> <p>7 one to do this work as an investigator on</p> <p>8 behalf of the university?</p> <p>9 MR. PICCERILLI: Objection to</p> <p>10 form.</p> <p>11 THE WITNESS: I don't know that</p> <p>12 I would use the word "primary." She</p> <p>13 was the -- our primary contact. I</p> <p>14 don't know that I'd call -- we</p> <p>15 certainly don't call her the primary</p> <p>16 investigator. She is one of them.</p> <p>17 She's the one that we contact to see</p> <p>18 which investigator will investigate a</p> <p>19 matter.</p> <p>20 BY MR. SCHWABENLAND:</p> <p>21 Q. Had you played any part in</p> <p>22 selecting Ms. Malloy?</p> <p>23 A. I did not.</p> <p>24 Q. Do you know who selected</p>	<p style="text-align: right;">Page 152</p> <p>1 which, as I understand it, refers to</p> <p>2 cases managed by Elizabeth Malloy.</p> <p>3 Fair enough?</p> <p>4 MR. PICCERILLI: I just want to</p> <p>5 correct you. I think you have the</p> <p>6 document numbers wrong. You said 131.</p> <p>7 The first one is 1331, the second one</p> <p>8 is 1332, the third one is 1333, and</p> <p>9 the fourth one is 1334.</p> <p>10 MR. SCHWABENLAND: I did</p> <p>11 misstate it. Thank you.</p> <p>12 MR. PICCERILLI: You're</p> <p>13 welcome.</p> <p>14 BY MR. SCHWABENLAND:</p> <p>15 Q. Let me deal with -- if we can,</p> <p>16 let's use 1333 and 1334. Okay. That has "EM"</p> <p>17 on the side of it. That goes from the --</p> <p>18 first of all, at the very top it has</p> <p>19 "Respondents in sexual misconduct" and then in</p> <p>20 parentheses it has "ISMP/SMP." I take it the</p> <p>21 "I" stands for interim sexual misconduct</p> <p>22 policy?</p> <p>23 A. Yes.</p> <p>24 Q. The effectiveness of the</p>
<p style="text-align: right;">Page 151</p> <p>1 Ms. Malloy?</p> <p>2 A. I do not.</p> <p>3 MR. SCHWABENLAND: Let's go off</p> <p>4 camera one second.</p> <p>5 THE VIDEOGRAPHER: Off the</p> <p>6 video record, 1:24.</p> <p>7 -- --</p> <p>8 (Off the record)</p> <p>9 -- --</p> <p>10 MR. SCHWABENLAND: I will have</p> <p>11 this marked.</p> <p>12 -- --</p> <p>13 (Whereupon, Exhibit Bordak-1</p> <p>14 was marked for purposes of</p> <p>15 identification.)</p> <p>16 -- --</p> <p>17 THE VIDEOGRAPHER: Back on the</p> <p>18 record, 1:25.</p> <p>19 MR. SCHWABENLAND: We have just</p> <p>20 marked as Bordak-1 four pages with</p> <p>21 Bates stamp from the university 131,</p> <p>22 132, and then 133 and 134 is the exact</p> <p>23 same thing as 131 and 132 except it</p> <p>24 has handwriting of "EM" on the side,</p>	<p style="text-align: right;">Page 153</p> <p>1 policy, it became effective June 15, 2015; is</p> <p>2 that correct? If you look at -- if you look</p> <p>3 at the one marked 1175 Bates stamp. So -- but</p> <p>4 the -- while it is being finalized and</p> <p>5 becoming effective as of June 2015, would that</p> <p>6 ISMP, the interim, essentially mean that</p> <p>7 sexual misconduct cases as of the beginning of</p> <p>8 2015 were under a sexual misconduct policy?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Now, the names of the</p> <p>11 students, student respondents are not on</p> <p>12 there, but it does indicate their gender. Do</p> <p>13 you see that column?</p> <p>14 A. Yes.</p> <p>15 Q. And am I correct that the only</p> <p>16 two cases involving a female respondent are on</p> <p>17 the first page, 1333, and is number six and</p> <p>18 seven in that list. Do you see it there?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And the rest are all</p> <p>21 males. Take your time and look that over and</p> <p>22 see if you can confirm that.</p> <p>23 A. Yes.</p> <p>24 Q. All right. The female ones</p>

39 (Pages 150 - 153)

## CONFIDENTIAL

<p style="text-align: right;">Page 154</p> <p>1 were handled by Ms. Malloy in May of 2015 and</p> <p>2 they were found not responsible under her</p> <p>3 investigation; am I correct there?</p> <p>4 A. Yes.</p> <p>5 Q. And do you know if these</p> <p>6 females are the same females that were charged</p> <p>7 in the girls' softball team under a sexual</p> <p>8 misconduct policy?</p> <p>9 A. I don't know for certain.</p> <p>10 Q. Do you know of any other</p> <p>11 females that have been charged under a sexual</p> <p>12 misconduct policy other than the matters</p> <p>13 involving the girls' softball team?</p> <p>14 A. Prior to the interim sexual</p> <p>15 misconduct policy, yes. After the interim</p> <p>16 sexual misconduct policy, no, as I reference</p> <p>17 this document.</p> <p>18 Q. Okay. Do you know when you</p> <p>19 would have handled the hearing as a hearing</p> <p>20 officer handling the matter involving</p> <p>21 violations with regard to the girls' softball</p> <p>22 team?</p> <p>23 A. Like I said, it's a couple of</p> <p>24 years ago. It very well could have been</p>	<p style="text-align: right;">Page 156</p> <p>1 officer in any of them?</p> <p>2 A. I don't recall.</p> <p>3 Q. Are there -- in the time that</p> <p>4 you have been there can you tell whether or</p> <p>5 not there has been -- and, again, up until</p> <p>6 January of 2015 do you know if there have been</p> <p>7 more than five women charged or less than five</p> <p>8 women charged, if you know? And I don't want</p> <p>9 you to guess.</p> <p>10 A. That's difficult to answer.</p> <p>11 Q. Would you have that information</p> <p>12 available should counsel want it, counsel for</p> <p>13 the university?</p> <p>14 A. If it is within the student</p> <p>15 record, yes.</p> <p>16 Q. Okay. So how far do your</p> <p>17 student records go back, then? By your I mean</p> <p>18 OCS.</p> <p>19 A. It depends on the students. So</p> <p>20 records are maintained -- we have a record</p> <p>21 retention policy that's student driven. So</p> <p>22 when the student is no longer at the</p> <p>23 institution for seven years that record is</p> <p>24 expunged, except for expulsion records, which</p>
<p style="text-align: right;">Page 155</p> <p>1 spring of 2015. I don't recall specifics.</p> <p>2 Q. Okay. Prior to -- and I think</p> <p>3 you may have stated that, but I am not sure</p> <p>4 what you just said. Prior to the enactment of</p> <p>5 the sexual misconduct policy or any matters in</p> <p>6 2015, prior to January 2015 if there were any</p> <p>7 claims of sexual misconduct that would be</p> <p>8 handled as any other violation under the</p> <p>9 policies affording students a right to a</p> <p>10 hearing and -- under a hearing officer; am I</p> <p>11 correct?</p> <p>12 MR. PICCERILLI: Objection to</p> <p>13 form.</p> <p>14 THE WITNESS: They would be</p> <p>15 addressed as all other violations,</p> <p>16 yes.</p> <p>17 BY MR. SCHWABENLAND:</p> <p>18 Q. As all the others. Okay. And</p> <p>19 did you say you recall females being charged</p> <p>20 with sexual misconduct prior to 2015?</p> <p>21 A. Yes.</p> <p>22 Q. And do you know how many?</p> <p>23 A. I don't.</p> <p>24 Q. Did you act as a hearing</p>	<p style="text-align: right;">Page 157</p> <p>1 we keep permanently. So it's not consistent</p> <p>2 across situations. It's student driven.</p> <p>3 Q. So by "student driven" you mean</p> <p>4 from the date the student is no longer</p> <p>5 associated with the university then you go</p> <p>6 seven years forward?</p> <p>7 A. Correct.</p> <p>8 Q. And if a student were to come</p> <p>9 back for a master's, would that record be</p> <p>10 maintained then?</p> <p>11 A. Yes.</p> <p>12 Q. So what happens if you -- I am</p> <p>13 just making this up -- if you graduate from</p> <p>14 undergrad and then ten years later you come</p> <p>15 back for your master's, your previous record</p> <p>16 is no longer there?</p> <p>17 A. If there's been seven years</p> <p>18 since you've last attended, yes, it's</p> <p>19 expunged.</p> <p>20 Q. But information regarding</p> <p>21 whether or not there were other females prior</p> <p>22 to January of 2015 who were charged with</p> <p>23 sexual violation and what those findings would</p> <p>24 be, that would best be looked for in OCS,</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 158</p> <p>1 assuming that they haven't been destroyed or 2 done away with? 3 A. Yes. 4 Q. Let's get to the girls' 5 softball team. Do you know what the claims -- 6 do you know what the charges of 7 sexual misconduct were against -- first of 8 all, do you know how many girls were charged 9 with sexual misconduct? 10 A. I don't recall. 11 Q. How about, do you know how many 12 girls were charged with violation of nonsexual 13 things that you acted as hearing officer? 14 A. I don't recall. Again, this is 15 asking for details of a matter that was a few 16 years ago, so I really don't recall. 17 Q. But the girls' softball team 18 issue created a serious accusation against the 19 university around that time period, right? 20 MR. PICCERILLI: Objection to 21 form. 22 THE WITNESS: Perhaps. I mean, 23 I handled my process. I was 24 independent of that in the community</p>	<p style="text-align: right;">Page 160</p> <p>1 I am continually being asked for details of a 2 situation a couple of years ago and I don't 3 know the answer. 4 Q. So what did you find, either 5 responsible or not responsible? 6 A. I really can't recall. We have 7 a lot of cases and to understand the details 8 of a case from a few years ago that hasn't 9 been revisited in my mind, I really don't 10 remember. 11 Q. How many cases a year do you 12 handle? 13 A. My office handles quite a few. 14 Q. So what's quite a few? 15 A. Again, I would be making up the 16 number, but it's enough that when a case and a 17 matter is concluded we move on to the next and 18 we are not caught up with remembering the 19 details of every case. 20 Q. But don't you have to submit 21 statistics every year? 22 A. We do. I don't have those 23 committed to memory. 24 Q. Okay. And where would I find</p>
<p style="text-align: right;">Page 159</p> <p>1 standards office and so the complaint 2 against the university was totally 3 separate from -- 4 BY MR. SCHWABENLAND: 5 Q. I understand. 6 A. So I really -- I don't know, to 7 be honest, what the complaint against the 8 university -- 9 Q. So what did you do, then, as a 10 hearing officer? 11 A. I had a hearing for students 12 who were potentially or allegedly in violation 13 of nonsexual misconduct policy violations. 14 Q. More than one student? 15 A. More than one, yes. 16 Q. More than ten? 17 A. No. 18 Q. More than five? 19 A. No. 20 Q. So more than one but less than 21 five? 22 A. Yeah. I mean, it's just really 23 hard for me to remember details from a 24 situation a couple years ago when I feel like</p>	<p style="text-align: right;">Page 161</p> <p>1 those statistics? 2 A. We report in an annual security 3 report what's required by Clery. 4 Q. That's under the Clery Act? 5 A. Yes. 6 Q. But the Clery Act statistics 7 don't always gel with the statistics from your 8 office for sexual misconduct or other things, 9 right? 10 MR. PICCERILLI: Objection to 11 form. 12 THE WITNESS: Potentially. 13 BY MR. SCHWABENLAND: 14 Q. I am not criticizing it. It's 15 just a different purpose, right? 16 A. Sorry. I wouldn't say that 17 it's a different purpose, but the parameters 18 with which we are required to report 19 information under Clery does not capture all 20 violations, you're correct. 21 Q. That's what I meant to say. 22 You said it much better than I could ever say. 23 So where do you keep these statistics? I 24 mean, is it a report each year that you keep</p>

41 (Pages 158 - 161)



## CONFIDENTIAL

<p style="text-align: right;">Page 162</p> <p>1 on file?</p> <p>2 A. For some data points we</p> <p>3 maintain longitudinal documents. For others</p> <p>4 it's a report drawn from our system when</p> <p>5 asked.</p> <p>6 Q. I am jumping around here. Did</p> <p>7 you ever give a speech about -- let me back</p> <p>8 up. Did you or, to your knowledge, anybody</p> <p>9 else at the university ever give a speech to</p> <p>10 students, other faculty members claiming that</p> <p>11 the opinion was that sexual misconduct charges</p> <p>12 are underreported?</p> <p>13 A. I can only speak for myself. I</p> <p>14 can't speak for others. And I have given</p> <p>15 presentations and shared the national trend of</p> <p>16 underreporting of sexual assaults, yes.</p> <p>17 Q. What is the national trend?</p> <p>18 A. That it is an underreported</p> <p>19 crime.</p> <p>20 Q. Are you able to say to what</p> <p>21 degree, what percentage?</p> <p>22 A. No.</p> <p>23 Q. Do you know what that is based</p> <p>24 upon? You said nation trend. I take it there</p>	<p style="text-align: right;">Page 164</p> <p>1 students on the softball team, right?</p> <p>2 A. Correct, as well as the team</p> <p>3 itself. We did address the team itself as</p> <p>4 potentially in violation of policy.</p> <p>5 Q. So did you hear -- did you hear</p> <p>6 decisions against the team?</p> <p>7 A. I did.</p> <p>8 Q. And so did you make a ruling on</p> <p>9 that against the team?</p> <p>10 MR. PICCERILLI: Hold on a</p> <p>11 second. I'm going to object to this</p> <p>12 to the extent it's protected by FERPA.</p> <p>13 Let's go off the video record.</p> <p>14 THE VIDEOGRAPHER: Off the</p> <p>15 video record, 1:39.</p> <p>16 MS. SCHIMELFENIG: So I am</p> <p>17 going to step in as the counsel for</p> <p>18 the university, apart from this case</p> <p>19 but responsible for its compliance</p> <p>20 with FERPA. Because the softball team</p> <p>21 is a discrete identifiable group of</p> <p>22 students who are entitled to privacy</p> <p>23 under FERPA regarding their education</p> <p>24 records of which this kind of</p>
<p style="text-align: right;">Page 163</p> <p>1 is some report or something?</p> <p>2 A. I've presented material</p> <p>3 prepared by our student outreach and support</p> <p>4 office, which had that information. So I</p> <p>5 can't cite here today where that is drawn</p> <p>6 from. But it is something that I hear</p> <p>7 regularly at conferences and sessions that I</p> <p>8 might attend that sexual assault is</p> <p>9 underreported.</p> <p>10 Q. I'm just wondering how people</p> <p>11 come up with that criteria to determine that.</p> <p>12 If it's underreported that means it hasn't</p> <p>13 been reported, so --</p> <p>14 MR. PICCERILLI: Objection to</p> <p>15 form. I don't think that's a</p> <p>16 question.</p> <p>17 MR. SCHWABENLAND: I know.</p> <p>18 BY MR. SCHWABENLAND:</p> <p>19 Q. So can you help me out on that?</p> <p>20 A. No.</p> <p>21 Q. Okay. So let's get back to the</p> <p>22 case against the -- or cases against the</p> <p>23 girls' softball team. Your focus was as a</p> <p>24 hearing officer on nonsexual charges against</p>	<p style="text-align: right;">Page 165</p> <p>1 proceeding is part of, I am not going</p> <p>2 to on behalf of the university --</p> <p>3 well, let me put it this way: I am</p> <p>4 going to ask outside counsel for the</p> <p>5 university to preclude further inquiry</p> <p>6 that goes into personally identifiable</p> <p>7 information which relates to a team</p> <p>8 which is an identifiable unit in this</p> <p>9 deposition without the prior written</p> <p>10 consent or a court order that says</p> <p>11 that the interest of justice requires</p> <p>12 regarding the team aspect of this</p> <p>13 matter. That's an objection that the</p> <p>14 university is asking to be endorsed or</p> <p>15 put on the record by counsel in this</p> <p>16 matter.</p> <p>17 MR. PICCERILLI: So I do put it</p> <p>18 on the record. And that, to the</p> <p>19 extent you're asking him questions</p> <p>20 about the team, that is, persons that</p> <p>21 is identifiable, we have to under</p> <p>22 FERPA object to the disclosure of that</p> <p>23 information and we will instruct the</p> <p>24 witness not to answer those types of</p>

42 (Pages 162 - 165)

## CONFIDENTIAL

<p style="text-align: right;">Page 166</p> <p>1 questions.</p> <p>2 MR. SCHWABENLAND: Let's call</p> <p>3 the judge.</p> <p>4 MS. SCHIMELFENIG: As to the</p> <p>5 team.</p> <p>6 MR. SCHWABENLAND: Let's call</p> <p>7 the judge.</p> <p>8</p> <p>9 (Off the record. Time noted,</p> <p>10 1:40 p.m. to 2:14 p.m.)</p> <p>11</p> <p>12 MR. SCHWABENLAND: We just had</p> <p>13 a discussion with the judge's law</p> <p>14 clerk, who may be attempting to speak</p> <p>15 with the judge. Whether or not we get</p> <p>16 a callback on a Friday afternoon is</p> <p>17 unclear. Depends on the judge's</p> <p>18 availability. So the real objection,</p> <p>19 which we explained to the judge's</p> <p>20 chambers, was the university's</p> <p>21 instruction of the witness not to</p> <p>22 answer any questions concerning any</p> <p>23 inquiries as to the softball team or</p> <p>24 the investigation against the softball</p>	<p style="text-align: right;">Page 168</p> <p>1 officer against more than one player from the</p> <p>2 team and less than five players from the team?</p> <p>3 Is that your best estimate?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Did you hear the claims</p> <p>6 against them all at once or separately?</p> <p>7 A. I am not sure what you mean by</p> <p>8 "all at once or separately."</p> <p>9 Q. Sure. You scheduled a hearing</p> <p>10 for them to come in and at which time they can</p> <p>11 hear the evidence against them and present</p> <p>12 evidence; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. And so were they -- did they</p> <p>15 have a hearing all one hearing or was each</p> <p>16 afforded a separate hearing where only one</p> <p>17 respondent shows up at a time?</p> <p>18 A. They were individual hearings.</p> <p>19 Q. So, essentially, if -- I am</p> <p>20 just saying, if there were three players that</p> <p>21 you were a hearing officer on, you would have</p> <p>22 had three hearings; is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know if the person or</p>
<p style="text-align: right;">Page 167</p> <p>1 team as a unit, as I understand it.</p> <p>2 So with that in mind, since it's</p> <p>3 pending and we are waiting to hear</p> <p>4 back from the judge, I am not going to</p> <p>5 ask any questions about the softball</p> <p>6 team as a unit. I will ask questions</p> <p>7 about individuals and I assume that's</p> <p>8 okay and I don't waive my right to ask</p> <p>9 questions about the softball team</p> <p>10 until we hear from the judge.</p> <p>11 MR. PICCERILLI: Let's proceed</p> <p>12 and we will take it step by step, but</p> <p>13 as a general principle I think we are</p> <p>14 in agreement.</p> <p>15 MR. SCHWABENLAND: Okay. Thank</p> <p>16 you. Let's go back, if we could.</p> <p>17 THE VIDEOGRAPHER: Back on the</p> <p>18 record, 2:18.</p> <p>19 BY MR. SCHWABENLAND:</p> <p>20 Q. In your handling of the case</p> <p>21 involving -- I will say involving the softball</p> <p>22 team but individuals here and yourself acting</p> <p>23 as a hearing officer and, again, your best</p> <p>24 estimate, it was -- you acted as the hearing</p>	<p style="text-align: right;">Page 169</p> <p>1 persons complaining against these individuals,</p> <p>2 if they appeared at the hearing?</p> <p>3 A. I can't recall.</p> <p>4 Q. Do you know what your findings</p> <p>5 were against those individuals?</p> <p>6 A. I can't recall.</p> <p>7 Q. So as you sit here you don't</p> <p>8 even know if you found them to be responsible</p> <p>9 or not responsible or it was undetermined?</p> <p>10 A. Truly, I can't recall.</p> <p>11 Q. Do you ever recall talking with</p> <p>12 the investigator who was handling the sexual</p> <p>13 misconduct claims?</p> <p>14 A. I don't recall.</p> <p>15 Q. How many times have you put</p> <p>16 something like this on a co-equal tracks, that</p> <p>17 is, you act as hearing officer or somebody</p> <p>18 acts as a hearing officer for the nonsexual</p> <p>19 and an investigator handles the sexual</p> <p>20 misconduct?</p> <p>21 A. I can't give you an exact</p> <p>22 number of how many times that's happened, but</p> <p>23 it has happened more than this occasion.</p> <p>24 Q. But when you say -- I don't</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 170</p> <p>1 want an exact number, because I know you can't 2 do it. 3 A. Right. 4 Q. Is it less than five, more than 5 five? 6 A. I am not sure. I am not 7 comfortable putting an exact number on it, but 8 I know there is more than this matter. 9 Q. In the last three years do you 10 know how many? 11 A. I don't know. 12 Q. But since 2015, when this was 13 on a multiple -- two tracks, parallel tracks, 14 have there been any other that have taken the 15 parallel tracks? 16 A. I can't recall. 17 Q. But you would have this 18 information available in your office? 19 A. I would, as long -- presuming 20 it's in the student files. 21 Q. What was the nature of the 22 nonsexual charges that you were addressing 23 against each of the three individuals or one 24 or more -- I'm sorry, I said each of the</p>	<p style="text-align: right;">Page 172</p> <p>1 alcohol policy. There could be general 2 disrespect or hazing or something like that. 3 Again, I don't know with specificity the 4 charges at that time. 5 Q. Well, the bulk of the 6 complaints, at least in -- on the -- at least 7 on the complaint would indicate ongoing 8 hazing. 9 THE VIDEOGRAPHER: Off the 10 record, 2:24. 11 -- -- 12 (Off the record) 13 -- -- 14 MR. SCHWABENLAND: The court 15 reporter is now ready, your Honor. 16 JUDGE DIAMOND: Would the 17 lawyers please identify themselves and 18 their clients? 19 MR. SCHWABENLAND: Yes. Ed 20 Schwabenland on behalf of the 21 Plaintiff, John Doe. 22 MR. MIRABELLA: John Mirabella, 23 also on behalf of the Plaintiff, John 24 Doe.</p>
<p style="text-align: right;">Page 171</p> <p>1 three, that's not right -- against those 2 individual players? 3 A. Again, I don't know with 4 specificity, so I hesitate to share a charge 5 if that, in fact, wasn't -- 6 Q. But don't you have a general 7 idea? Was it harassment? Was it assault? 8 Was it -- there is an allegation that girls 9 may have been forced to simulate manual sex 10 over their clothes or things like that or to 11 simulate oral sex with a wine bottle, at least 12 that's on the complaint. Were any of those 13 allegations handled by you or is that sexual 14 in nature? 15 A. If it were conduct implicated 16 by the SMP, it would not be addressed by me, 17 it would be addressed by the investigator. 18 Q. So I'm trying to determine, so 19 were you handling harassment? Were you 20 handling -- what were you handling? 21 A. As I recall, again, this is 22 not -- I don't have full memory, but I think 23 at least one occasion there was alcohol 24 present, so there could be a violation of the</p>	<p style="text-align: right;">Page 173</p> <p>1 MR. PICCERILLI: Albert 2 Piccerilli, on behalf of St. Joseph's 3 University and William Bordak. 4 MS. SCHIMELFENIG: Marianne 5 Schimelfenig, general counsel, St. 6 Joseph's University. 7 MS. MCREYNOLDS: Holly 8 McReynolds on behalf of Defendant, 9 Jane Roe. 10 JUDGE DIAMOND: Okay. As my 11 clerk has explained it to me -- who is 12 the deponent, by the way? 13 MR. PICCERILLI: The deponent 14 is William Bordak, who is the director 15 of community standards, the office of 16 community standards at St. Joseph's 17 University. 18 JUDGE DIAMOND: As my clerk has 19 explained it to me, the plaintiff is 20 seeking to inquire of the deponent as 21 to the university's investigation of 22 charges made against certain members 23 of the women's -- is it the softball 24 team?</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 174</p> <p>1 MR. SCHWABENLAND: Yes.</p> <p>2 MR. PICCERILLI: Your Honor, if</p> <p>3 I might?</p> <p>4 JUDGE DIAMOND: Hold on.</p> <p>5 Charges made by members of the</p> <p>6 softball team against other members of</p> <p>7 the softball team; is that right?</p> <p>8 MR. SCHWABENLAND: Yes, sir.</p> <p>9 JUDGE DIAMOND: And how recent</p> <p>10 was this?</p> <p>11 MR. SCHWABENLAND: 2015.</p> <p>12 JUDGE DIAMOND: And how many</p> <p>13 members of the softball team were</p> <p>14 accused -- the misconduct is both</p> <p>15 sexual and nonsexual in nature, the</p> <p>16 alleged misconduct; is that right?</p> <p>17 MR. SCHWABENLAND: Yes. It was</p> <p>18 placed on a parallel track --</p> <p>19 JUDGE DIAMOND: Just answer my</p> <p>20 questions, please. Sexual and</p> <p>21 nonsexual in nature; is that right?</p> <p>22 MR. SCHWABENLAND: That's</p> <p>23 correct.</p> <p>24 JUDGE DIAMOND: And Ms. Malloy</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. PICCERILLI: But, Your</p> <p>2 Honor, if I may, what the issue is --</p> <p>3 JUDGE DIAMOND: No, you may</p> <p>4 not. Just let me ask my questions</p> <p>5 then you can say what you want. St.</p> <p>6 Joe's is objecting on certain grounds</p> <p>7 because the members of the team might</p> <p>8 otherwise be identifiable even if they</p> <p>9 are not named and, indeed, even if, as</p> <p>10 we now hear from the deponent, he</p> <p>11 doesn't even know how many there were,</p> <p>12 but there were no more than five? Is</p> <p>13 that the objection, that you ask it to</p> <p>14 remain confidential and the identities</p> <p>15 of the accused might be -- might</p> <p>16 somehow be revealed through some</p> <p>17 investigation?</p> <p>18 MR. PICCERILLI: Your Honor,</p> <p>19 this is Albert Piccerilli. The</p> <p>20 objection is that plaintiff's counsel</p> <p>21 is asking regarding the team as a</p> <p>22 whole. We are not objecting as to</p> <p>23 specific unidentifiable people, women</p> <p>24 on the people.</p>
<p style="text-align: right;">Page 175</p> <p>1 did the investigation for the</p> <p>2 university; is that correct?</p> <p>3 MR. SCHWABENLAND: Yes.</p> <p>4 JUDGE DIAMOND: And how many</p> <p>5 members of the team were accused?</p> <p>6 MR. SCHWABENLAND: Mr. Bordak</p> <p>7 does not know. His end of it, it was</p> <p>8 more than one but less than five. We</p> <p>9 don't know about Ms. Malloy --</p> <p>10 JUDGE DIAMOND: Wait. More</p> <p>11 than one but less than five. And how</p> <p>12 many members of the softball team were</p> <p>13 there in 2015?</p> <p>14 MR. PICCERILLI: Probably</p> <p>15 between 12 and 16.</p> <p>16 JUDGE DIAMOND: 12 and 16.</p> <p>17 MR. PICCERILLI: Not sure, but</p> <p>18 probably in that range.</p> <p>19 JUDGE DIAMOND: In that range.</p> <p>20 So no more than a third of the -- top</p> <p>21 edges of a third of the 15 or if it</p> <p>22 was a smaller team, five out of the</p> <p>23 12?</p> <p>24 MR. SCHWABENLAND: Yes, sir.</p>	<p style="text-align: right;">Page 177</p> <p>1 JUDGE DIAMOND: I don't</p> <p>2 understand. What do you mean, asking</p> <p>3 as a whole? As I understand it, he</p> <p>4 wants to ask about steps of the</p> <p>5 investigation, the nature of the</p> <p>6 investigation and so forth.</p> <p>7 MS. SCHIMELFENIG: Your Honor,</p> <p>8 this Marianne -- I'm sorry. Pardon</p> <p>9 me.</p> <p>10 JUDGE DIAMOND: Wait. I really</p> <p>11 wish people would stop interrupting</p> <p>12 me. Mr. Schwabenland, what do you</p> <p>13 want to know?</p> <p>14 MR. SCHWABENLAND: Two things.</p> <p>15 One is -- and counsel does not object</p> <p>16 to that -- that I can ask questions</p> <p>17 about individual players as long as we</p> <p>18 don't identify them and what happened</p> <p>19 to them and that's fine. And what</p> <p>20 prompted my telephone call to your</p> <p>21 chambers -- and I apologize for having</p> <p>22 to bother you on Friday afternoon --</p> <p>23 but Mr. Bordak said he was the hearing</p> <p>24 officer as to those individuals</p>

45 (Pages 174 - 177)



## CONFIDENTIAL

<p style="text-align: right;">Page 178</p> <p>1 charged nonsexually and there was more 2 than one, less than five, but he was 3 also the hearing officer with regard 4 to whether any sanctions should be 5 imposed against the girls' softball 6 team. We get didn't get into that 7 because he was then instructed not to 8 answer any questions about what he did 9 as a hearing officer concerning the 10 softball team itself. 11 JUDGE DIAMOND: So the question 12 is whether or not he imposed sanctions 13 on the whole team? 14 MR. SCHWABENLAND: Yes, because 15 he raised that. He said it was not 16 only those girls but he was the 17 hearing officer as to what sanctions 18 should be imposed, if any, as to the 19 team, such as you suspended them or do 20 whatever. 21 MS. SCHIMELFENIG: There were 22 charges -- 23 JUDGE DIAMOND: Wait, please. 24 If a sanction was imposed wouldn't it</p>	<p style="text-align: right;">Page 180</p> <p>1 objecting to are the inquiries 2 regarding the team as a whole. The 3 team as a whole -- 4 JUDGE DIAMOND: I know that. 5 How does that trigger the statutory 6 protections as to individuals? 7 MR. PICCERILLI: It invokes it 8 because the team as a whole is an 9 identifiable group of female students 10 who were on the team at the time. 11 JUDGE DIAMOND: Your objection 12 is overruled. I am directing the 13 witness to answer -- 14 MS. SCHIMELFENIG: Your 15 Honor -- 16 JUDGE DIAMOND: -- unless you 17 have another ground to object. 18 MS. SCHIMELFENIG: Well, your 19 Honor, this is Marianne Schimelfenig. 20 I deal with FERPA pretty regularly, as 21 you might imagine, in my job. But the 22 law under FERPA is that if the Court 23 orders a university, as you are doing 24 here, to disclose education records</p>
<p style="text-align: right;">Page 179</p> <p>1 be public knowledge? 2 MS. SCHIMELFENIG: No. 3 JUDGE DIAMOND: If the team was 4 suspended from play, that wouldn't be 5 public knowledge? 6 MS. SCHIMELFENIG: Your Honor, 7 this is Marianne Schimelfenig. The 8 entire team was not suspended from 9 play. 10 JUDGE DIAMOND: Well, you're 11 telling me what the sanction was, 12 aren't you? You're telling me what 13 the sanction was not. I'm sorry. Is 14 he going to have to guess? This to me 15 seems to be a frivolous objection, 16 unless you can put more meat on it. I 17 think the team as whole -- individuals 18 are not being singled out in any way. 19 I don't see how the statute protects 20 it. And, in any event, if I order you 21 to do it the statute protects the 22 university. What am I missing? 23 MR. PICCERILLI: Your Honor, 24 the line of questioning that we are</p>	<p style="text-align: right;">Page 181</p> <p>1 without the prior written consent of 2 the students whose identity will 3 become known that the Court has to 4 include in its order, to protect the 5 university, that the interest of 6 justice requires that the disclosure 7 be made without the prior written 8 consent of the students whose identity 9 will be disclosed. 10 JUDGE DIAMOND: I am certainly 11 prepared to order that, although it 12 seems to me this -- just what I knew 13 about this dispute yesterday, it seems 14 to me the university was on notice 15 that this could well have been an area 16 of inquiry and could have contacted 17 the students or their parents, 18 whatever the statute requires, but no 19 matter. I so find. There will be a 20 written order issued. I am in Vermont 21 right now, but I will ask a colleague 22 of mine to sign on my behalf. My 23 written order will make such a 24 finding. Is there anything else?</p>



## CONFIDENTIAL

<p style="text-align: right;">Page 182</p> <p>1 MR. SCHWABENLAND: No, sir.  2 JUDGE DIAMOND: Thank you.  3 MR. PICCERILLI: Nothing else,  4 Your Honor.  5 MR. SCHWABENLAND: Thank how  6 Your Honor.  7 -- --  8 (End of telephone conference)  9 -- --  10 MR. PICCERILLI: We have just  11 had a conference, as the court  12 reporter has taken down, a conference  13 with Judge Diamond regarding the  14 objection, the FERPA objection to  15 questions about the softball team as a  16 whole. We all stated our positions.  17 The judge has ordered and he has  18 indicated that he would order or sign  19 a written order that in the interest  20 of justice no prior notice to be given  21 by the university to students  22 regarding this particular matter,  23 students who were on the softball  24 team. Off the record.</p>	<p style="text-align: right;">Page 184</p> <p>1 five, right?  2 A. Yes.  3 Q. But you also acted as hearing  4 officer in evaluating the charge against the  5 whole softball team?  6 A. As an entity, yes.  7 Q. Okay. And what did you  8 conclude?  9 A. I don't recall.  10 Q. Have you acted as a hearing  11 officer since being at -- since being at the  12 university, at St. Joe's, where you evaluated  13 a sports group as an entity?  14 A. Yes.  15 Q. And this would be as to  16 nonsexual claims of misconduct?  17 A. Yes.  18 Q. And are you able to tell me in  19 your association in your time with the  20 university how many times that occurred?  21 A. Not with exactness.  22 Q. I don't want exactness, but can  23 you approximate for me?  24 A. At least a few times every</p>
<p style="text-align: right;">Page 183</p> <p>1 -- --  2 (Off the record)  3 -- --  4 MR. PICCERILLI: Let me add  5 this: Even to the extent that the  6 information that may be inquired about  7 constitutes education records under  8 FERPA or personally identifiable  9 information is involved.  10 -- --  11 (Whereupon, a recess was held  12 from 2:37 p.m. to 2:42 p.m.)  13 -- --  14 THE VIDEOGRAPHER: Back on the  15 record, 2:42.  16 BY MR. SCHWABENLAND:  17 Q. Mr. Bordak, thanks. You've  18 been patient. We had some matters to clear up  19 with the Court. So it's now resolved. Can  20 you -- let me go back. You indicated that you  21 not only acted as hearing officer with regard  22 to evaluating nonsexual charges against some  23 members of the softball team, which was  24 perhaps more than one member but less than</p>	<p style="text-align: right;">Page 185</p> <p>1 year.  2 Q. Okay. And the nature of these  3 would be what, acting up or --  4 A. It could be a range of conduct,  5 from hazing to violations of the alcohol  6 policy.  7 Q. Have you ever imposed sanctions  8 against a sports team at the university  9 whereby you either suspend their activity or  10 restrict their activity?  11 A. I can't recall.  12 Q. Have you ever imposed sanctions  13 against a sports team where you would impose a  14 requirement that they have to do some  15 additional studies or to learn how to behave  16 correctly or something?  17 A. Yes.  18 Q. Have you ever suspended the  19 activities of a sports team because of a  20 finding of misconduct?  21 A. I can't recall.  22 Q. It seems to me that that would  23 be something you should recall.  24 A. I truly, honestly cannot</p>

47 (Pages 182 - 185)

## CONFIDENTIAL

<p style="text-align: right;">Page 186</p> <p>1 recall. I have -- whether it's restriction of 2 individual members of the team or the team as 3 an entity, like, I can't remember whether -- 4 that would be a higher end of the sanction, so 5 that's not something that's regular. I can't 6 recall whether I have done that. 7 Q. You don't recall your findings 8 when you acted as hearing officer against the 9 softball team, the girls' softball team, 10 findings against them, whether it was 11 responsible, not responsible, or undetermined? 12 A. I really can't remember. 13 Q. So you don't know if you 14 imposed any sanctions whatsoever? 15 A. I know that there were 16 sanctions imposed. I don't know whether they 17 were team sanctions, individual sanctions, and 18 what individual students those related to. 19 Q. Do you know what sanctions were 20 imposed? 21 A. I know that at some level there 22 was restriction in performance, in 23 competition. Again, I don't know whether that 24 was the specific individuals or whether it was</p>	<p style="text-align: right;">Page 188</p> <p>1 MR. SCHWABENLAND: Katie Bean. 2 BY MR. SCHWABENLAND: 3 Q. Ms. Bean was just deposed 4 Tuesday and she indicated that she would 5 normally in years past talk to sport teams 6 about alcohol and drugs and to stay away from 7 it, but she was specifically asked after the 8 incident with the softball team to go and talk 9 to them about hazing. Do you recall that at 10 all? 11 MR. PICCERILLI: Objection to 12 form. 13 THE WITNESS: I don't recall 14 that. 15 BY MR. SCHWABENLAND: 16 Q. Do you recall Ms. Bermey going 17 and talking with the softball team about 18 harassment? 19 A. I don't recall that. 20 Q. But the information concerning 21 the handling of this would be, again, 22 available in the file in your office, right? 23 A. Yes. 24 Q. Do you know how many --</p>
<p style="text-align: right;">Page 187</p> <p>1 team related. We are talking a couple of 2 years ago, three years ago, and a lot has 3 happened since then. I can't remember. 4 Q. Can we agree that there were at 5 least some restrictions imposed as to 6 individual team members at least? 7 A. I don't know that there was 8 restrictions imposed on individual team 9 members. 10 Q. But if you impose restrictions 11 on a whole team then that would also be 12 imposed on individuals, right? 13 A. Said that way, I would agree, 14 that by nature of being on a team a 15 restriction on the team would restrict 16 individual people. 17 Q. Ms. -- I forget the young 18 lady's name who was just deposed on Tuesday. 19 Do you recall? 20 MR. PICCERILLI: Yes, I do. 21 MR. SCHWABENLAND: Would you 22 share that with me? 23 MR. PICCERILLI: I think you're 24 talking about Katie Bean.</p>	<p style="text-align: right;">Page 189</p> <p>1 Exhibit-1 just identifies those individuals 2 who were charged with sexual misconduct; is 3 that correct? 4 A. Or interim sexual misconduct. 5 Q. Or interim? 6 A. Correct. 7 Q. But starting as of January of 8 2015? 9 A. Yes. 10 Q. Interim just means that the 11 softball team policy became effective as of 12 June, but for those months prior to June 2015 13 it was still handled under sexual misconduct, 14 right? 15 A. The interim sexual misconduct 16 policy, as I understand it, was in 17 place because it did not -- the difference 18 between the interim sexual -- one of the major 19 differences between the interim sexual 20 misconduct policy and the sexual misconduct 21 policy is that the interim did not cover 22 nonstudent respondents, yet that was still 23 going through, as I understood it, in 24 conversations with university council, since</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 190</p> <p>1 it was a campus-wide involving nonstudents,  2 the sexual misconduct policy then, when it  3 became effective in June, covered nonstudents.  4 Q. Okay.  5 MR. PICCERILLI: If I just  6 might state, council is spelled  7 C-O-U-N-C-I-L.  8 BY MR. SCHWABENLAND:  9 Q. As a result of you acting as  10 hearing officer on the matters involving the  11 allegations against the girls' softball team  12 or some of the players on the team, did you --  13 did your office change anything to do with the  14 procedure or protocol either in investigating,  15 charging, conducting hearings, anything?  16 A. Not in response to anything  17 involving the softball matter, no.  18 Q. And how about on the other  19 parallel track of the sexual misconduct? You  20 know what the results were on that, right? I  21 mean, you did know what the results were on  22 that?  23 A. At the time. I can't recall  24 the results now.</p>	<p style="text-align: right;">Page 192</p> <p>1 the incident was March 24, 2015, right?  2 A. Right.  3 Q. And what's the date where it  4 says created, 5/21/15?  5 A. That's when the report was  6 created on our end, like, within our system.  7 Q. Okay. So that the findings  8 would have been concluded by then; is that  9 correct?  10 A. Presumably. I don't know when  11 the outcome was reached.  12 Q. I don't see any other women  13 there. So the -- would it be fair to assume  14 that those two were probably from the girls'  15 softball team?  16 A. Yes, but it would be an  17 assumption.  18 Q. I understand.  19 A. Yes.  20 Q. Can you recall anything that  21 Elizabeth Malloy said to you about her  22 investigation about the girls' softball team?  23 A. I cannot recall.  24 Q. But at some point would you</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. Okay. Well, assuming that the  2 only women were the two found not responsible,  3 those two would have been the investigator's  4 finding of nonresponsibility, right?  5 MR. PICCERILLI: Objection to  6 form.  7 THE WITNESS: Well, I don't  8 know with certainty that the two  9 mentioned here are the two in question  10 for the softball.  11 BY MR. SCHWABENLAND:  12 Q. No. I understand. But there  13 is no other -- again, sexual misconduct track  14 would be by an investigator, right?  15 A. Right.  16 Q. This was around 2015 and in  17 2015 the only two women on this were found not  18 responsible in May of 2015. Did I read that  19 correctly?  20 A. It was March.  21 Q. I'm sorry. March is the date  22 of the incident, right?  23 A. Right.  24 Q. Oh. I'm sorry. The date of</p>	<p style="text-align: right;">Page 193</p> <p>1 have known what the findings were?  2 A. Yes.  3 Q. And if this says the findings  4 of the two girls on the sexual misconduct  5 thing was not responsible, then the sexual  6 charges against them was found to be not  7 responsible, right?  8 MR. PICCERILLI: Objection to  9 form.  10 THE WITNESS: Yes.  11 BY MR. SCHWABENLAND:  12 Q. Okay. Have you been involved  13 with any investigations involving -- and I  14 don't need to know the student's name --  15 charges of impropriety or violations of  16 student conduct who's related to either  17 anybody on staff or the board of trustees or  18 anybody associated -- employed by the  19 university?  20 MR. PICCERILLI: Can we hear  21 that question back?  22 -- --  23 (Whereupon, the court reporter  24 read back from the record.)</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 194</p> <p>1           ---</p> <p>2           MR. PICCERILLI: Note my</p> <p>3           objection to the form of the question.</p> <p>4 BY MR. SCHWABENLAND:</p> <p>5           Q. Can you answer that?</p> <p>6           A. Yes.</p> <p>7           Q. Okay.</p> <p>8           MS. SCHIMELFENIG: I want to --</p> <p>9           can we go off the record?</p> <p>10          THE VIDEOGRAPHER: Off the</p> <p>11          video record, 2:53.</p> <p>12          ---</p> <p>13          (Off the record)</p> <p>14          ---</p> <p>15          THE VIDEOGRAPHER: Back on the</p> <p>16          record, 2:55.</p> <p>17 BY MR. SCHWABENLAND:</p> <p>18          Q. We are at the point where you</p> <p>19          just said yes, you have known of a case or</p> <p>20          cases involving discipline proceedings against</p> <p>21          a student who may be related to someone at the</p> <p>22          university, whether trustees or whatever; is</p> <p>23          that correct?</p> <p>24          MR. PICCERILLI: Read the</p>	<p style="text-align: right;">Page 196</p> <p>1           reframe your question so that it</p> <p>2           reflects those broad categories, that</p> <p>3           would make it better, that would make</p> <p>4           your question better.</p> <p>5           MR. SCHWABENLAND: Okay. Let's</p> <p>6           go back on the record and I'll try.</p> <p>7           THE VIDEOGRAPHER: Back on</p> <p>8           record 2:57.</p> <p>9 BY MR. SCHWABENLAND:</p> <p>10          Q. Okay. Let me try to rephrase</p> <p>11          the question, if I can. I am not sure I will</p> <p>12          be doing it justice, but let me try. I</p> <p>13          believe you said you've had occasion to -- by</p> <p>14          you I mean OCS -- had occasion to deal in</p> <p>15          disciplinary proceedings involving students</p> <p>16          who were in some way either related to a</p> <p>17          member of the university, faculty, staff, or</p> <p>18          board of trustees; is that correct?</p> <p>19          A. Yes.</p> <p>20          Q. And how often have you had that</p> <p>21          responsibility?</p> <p>22          A. I don't want to give a number,</p> <p>23          but it's somewhere between -- sometimes in</p> <p>24          regular there is faculty that have students on</p>
<p style="text-align: right;">Page 195</p> <p>1           question again. And, also, what were</p> <p>2           the categories, because "whatever"</p> <p>3           makes it -- I object to the form of</p> <p>4           "whatever." I object to the form of</p> <p>5           the question.</p> <p>6           MR. SCHWABENLAND: Do you want</p> <p>7           to go off the camera?</p> <p>8           MR. PICCERILLI: Yes.</p> <p>9           THE VIDEOGRAPHER: Off the</p> <p>10          record, 2:55.</p> <p>11          MR. PICCERILLI: I know you are</p> <p>12          trying to get this done, but I object</p> <p>13          to the form of the question. You said</p> <p>14          trustees, whatever. So I think you</p> <p>15          need to state who is in the broad</p> <p>16          category.</p> <p>17          MR. SCHWABENLAND: Fair enough.</p> <p>18          What he said yes to, read that</p> <p>19          question.</p> <p>20          ---</p> <p>21          (Whereupon, the court reporter</p> <p>22          read back from the record.)</p> <p>23          ---</p> <p>24          MR. PICCERILLI: If you can</p>	<p style="text-align: right;">Page 197</p> <p>1           campus -- their children on campus, staff</p> <p>2           members have children on campus and they're a</p> <p>3           student like any other student that come</p> <p>4           through our office. Sometimes I know there is</p> <p>5           a connection. Sometimes I don't.</p> <p>6           Q. And would these all have been</p> <p>7           nonsexual related offenses?</p> <p>8           A. Both.</p> <p>9           Q. And have those -- and who</p> <p>10          decides whether it's placed into the sexual</p> <p>11          offense category, under the sexual misconduct</p> <p>12          policy, or the nonsexual, under the community</p> <p>13          standards policy?</p> <p>14          A. Right. According to the policy</p> <p>15          there is an initial review where the Title IX</p> <p>16          coordinator or deputy Title IX coordinator</p> <p>17          will make that determination in consultation</p> <p>18          with community standards.</p> <p>19          Q. So are all decisions made by</p> <p>20          the Title IX coordinator, Dr. Perry?</p> <p>21          A. Correct, in consultation with</p> <p>22          community standards.</p> <p>23          Q. And you would be the one she</p> <p>24          consults with?</p>

50 (Pages 194 - 197)

## CONFIDENTIAL

<p style="text-align: right;">Page 198</p> <p>1 A. Most often, yes.</p> <p>2 Q. Okay. And if you're not</p> <p>3 available she would consult with whom?</p> <p>4 A. The assistant director.</p> <p>5 Q. Okay. But more often than not</p> <p>6 this was in consultation with you?</p> <p>7 A. Correct.</p> <p>8 Q. And so what criteria is used as</p> <p>9 to whether or not it should be placed into</p> <p>10 which category?</p> <p>11 A. The definitions of conduct</p> <p>12 precluded by the policy. So we're looking at</p> <p>13 the sexual misconduct to see what conduct is</p> <p>14 covered and whether the allegation or</p> <p>15 complaint met the definitions or approached</p> <p>16 those definitions of conduct, then it would go</p> <p>17 to the sexual misconduct policy.</p> <p>18 Q. Now, have you had other cases</p> <p>19 involving claims of sexual misconduct where</p> <p>20 the couple is, I am going to use the word</p> <p>21 "just," but just kissing?</p> <p>22 A. Yes.</p> <p>23 Q. And how many of those have you</p> <p>24 had in the last year or two?</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. Okay. Do you know John Doe?</p> <p>2 A. In this matter?</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. And did you know him before the</p> <p>6 matter came up -- was raised by Jane Roe about</p> <p>7 him?</p> <p>8 A. No.</p> <p>9 Q. So that's the first time you</p> <p>10 came to know him, his involvement in this</p> <p>11 matter, right?</p> <p>12 A. Yes.</p> <p>13 Q. And when did you first meet</p> <p>14 him?</p> <p>15 A. I believe it was the outcome</p> <p>16 meeting.</p> <p>17 Q. You were not involved in the</p> <p>18 investigation or the findings; is that</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Would you have been involved in</p> <p>22 the initial referral by Dr. Perry?</p> <p>23 A. The initial review?</p> <p>24 Q. Yes.</p>
<p style="text-align: right;">Page 199</p> <p>1 A. I can't put a number on it.</p> <p>2 Q. Can you give me a range, an</p> <p>3 approximation?</p> <p>4 A. There have been some in the</p> <p>5 past, but I can't give you a range.</p> <p>6 Q. Are we talking less than five,</p> <p>7 more than five?</p> <p>8 A. Over the course of -- what was</p> <p>9 the time frame?</p> <p>10 Q. Well, I will go with three,</p> <p>11 four years.</p> <p>12 A. I would say less than five, but</p> <p>13 that would be an answer based on my current</p> <p>14 recollection, which is not -- I'm not saying</p> <p>15 that it's the specific number.</p> <p>16 Q. And would that be handled by</p> <p>17 the investigator, then?</p> <p>18 A. Yeah. Any conduct that's</p> <p>19 covered by the SMP would be handled by the</p> <p>20 investigator.</p> <p>21 Q. Have you ever had occasion</p> <p>22 where you're uncertain which category to place</p> <p>23 it in?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 201</p> <p>1 A. Yes.</p> <p>2 Q. And the initial review would be</p> <p>3 where -- when?</p> <p>4 A. Well, I don't have a date, but</p> <p>5 between the complaint being filed and the</p> <p>6 assignment to the investigator was the initial</p> <p>7 review.</p> <p>8 Q. Okay. And did you know Jane</p> <p>9 Roe or do you know Jane Roe?</p> <p>10 A. I don't recall meeting her</p> <p>11 prior to this matter either.</p> <p>12 Q. So when you first met her it</p> <p>13 would have been when, at the outcome?</p> <p>14 A. I believe so.</p> <p>15 Q. So did you have a separate</p> <p>16 outcome meeting to advise Jane Roe?</p> <p>17 A. Yes.</p> <p>18 Q. And did you ever meet Jane Roe</p> <p>19 before that?</p> <p>20 A. I don't believe so.</p> <p>21 Q. Okay. Because she works in</p> <p>22 that office with Ms. Bean.</p> <p>23 A. So now -- I may have met her in</p> <p>24 terms of a worker within the building, but</p>

51 (Pages 198 - 201)



## CONFIDENTIAL

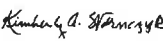
<p style="text-align: right;">Page 202</p> <p>1 there are many workers within the building and  2 so I don't have any preexisting relationship  3 or have -- knew her much before.  4 Q. Okay. Jane Roe was a freshman  5 in September 2016 and she worked on a  6 part-time basis in the office with Ms. Bean in  7 the same building where you're at, right?  8 A. Yes.  9 Q. But you have no recollection of  10 having met her or having any conversation that  11 sticks out in your mind?  12 A. Now that you mention that, as  13 an employee in another office I probably met  14 her, knew who she was, just like the other 20  15 employees within the office.  16 Q. Okay.  17 A. But I don't know that I have,  18 like, met her or had prolonged conversation  19 with her outside of her context of an  20 employee.  21 Q. Okay. Your role in the  22 accusation -- the investigation of the  23 accusation was -- as I understand it, it came  24 into -- the complaint came into your office</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. Now, we know in this case here  2 Emily Forte conducted the pre-investigation  3 meeting. Is that your understanding?  4 A. Yes.  5 Q. And what was your involvement  6 up until then?  7 A. Assisting Emily procedurally  8 with the -- it may have been, and I don't have  9 specific recollection, but when these matters  10 take place I would help the assistant director  11 with either coordinating the scheduling or  12 creating the documents for the meeting. We do  13 that collaboratively, so I don't recall who in  14 this instance did that.  15 Q. Okay. What documents need to  16 be prepared for the meeting?  17 A. The checklist and the letter,  18 which is the notice and invitation to the  19 meeting.  20 Q. So the notice and invitation to  21 meet would have been the first letter to go  22 out; is that correct?  23 A. Correct.  24 Q. And that's basically a standard</p>
<p style="text-align: right;">Page 203</p> <p>1 through Dr. Perry; is that correct?  2 A. Correct.  3 Q. And she would have generated a  4 report?  5 A. Correct.  6 Q. And was a report also generated  7 by public safety?  8 A. I believe so, yes.  9 Q. And so those two items would  10 have come into your office, right?  11 A. I did not receive the public  12 safety report.  13 Q. Okay. Well, assuming that it  14 came into your office, how would it come in?  15 MR. PICCERILLI: I am going to  16 object to the form of the question.  17 He has testified about that report.  18 Had no recollection of it, but ...  19 MR. SCHWABENLAND: Okay.  20 BY MR. SCHWABENLAND:  21 Q. But assuming that public safety  22 would send a report, how would it come in?  23 Would it come in hand delivered, by computer?  24 A. Through email.</p>	<p style="text-align: right;">Page 205</p> <p>1 letter that's sent out, just changing the  2 name -- just changing the place and the date  3 as to where the action occurred, right?  4 MR. PICCERILLI: Objection to  5 form.  6 THE WITNESS: There is -- it's  7 a template, but it may be more than  8 just that. It's a case by case.  9 BY MR. SCHWABENLAND:  10 Q. So when you said you assisted  11 her, that's a two-page letter, right?  12 A. About that. I don't know the  13 specifics.  14 Q. And so when you say you would  15 have assisted her in preparing this, is this,  16 what, you would have reviewed it after she  17 worked it up?  18 A. Or did it for her and on her  19 behalf created it. I mean, this is -- it's a  20 two-person office, that we do things  21 collaboratively. So I would have -- I could  22 have helped with her in this instance in the  23 administrative pieces.  24 Q. Did you make any determination</p>

52 (Pages 202 - 205)

## CONFIDENTIAL

<p style="text-align: right;">Page 206</p> <p>1 as to whether or not this case should be 2 placed into the sexual misconduct track or the 3 other track? 4 A. It was not my determination to 5 make, but through the initial review and 6 consultation I agreed with the decision to go 7 sexual misconduct policy. 8 Q. So did you -- so do you 9 actually recall making that determination? 10 A. The determination was not mine 11 to make, but I -- 12 Q. I know -- 13 MS. SCHIMELFENIG: He wasn't 14 finished. 15 MR. PICCERILLI: Let him 16 finish. 17 THE WITNESS: You're asking if 18 I remember making the determination. 19 I am saying, the determination was not 20 mine to make. 21 BY MR. SCHWABENLAND: 22 Q. So you didn't make any 23 determination, then, or you did? 24 A. I did not. I shared in</p>	<p style="text-align: right;">Page 208</p> <p>1 For the record, they are Bates stamped 1056 to 2 1064. Then there is the Memorandum of 3 Understanding with Campus Partners, the same 4 date, February 23, 2017 and for the record 5 I'll represent that they are Bates stamped 6 1065 to 1085. Now, you don't have them in 7 front of you. I will pull them out. First of 8 all, do you remember those two memorandums of 9 understanding? 10 A. I member them being shared with 11 me, but I was not a part of any composition or 12 creation of them. 13 Q. Do you recall being a signatory 14 to those documents, though? 15 A. Yes. 16 Q. And so when they were shared 17 with you when were they shared with you, on 18 the date you signed them or before? 19 A. I can't recall. 20 Q. Who shared them with you? 21 A. I can't recall specifically. 22 Q. Is this -- is this, like, at a 23 specific meeting to say, "Let's review this 24 Memorandum of Understanding" or either one or</p>
<p style="text-align: right;">Page 207</p> <p>1 consultation my thoughts with the Title IX 2 coordinator. 3 Q. The Title IX -- Dr. Perry? 4 A. Dr. Perry, correct. 5 Q. So you told her you agreed with 6 her? 7 A. Yes, my recollection. 8 Q. Did she ask your opinion? 9 A. I don't know that it was a 10 conversation like that, asking my opinion. It 11 was a review of the complaint in terms of the 12 policy and the conduct. 13 Q. And so the complaint would be 14 what? 15 A. The initial complaint, so what 16 was the -- 17 Q. Dr. Perry's report? 18 A. Dr. Perry's report. 19 Q. Okay. I am jumping back a 20 second. There are certain documents that -- 21 bear with me a second here. I'll represent to 22 you -- and we have the documents -- there is a 23 thing called Memorandum of Understanding with 24 Community Partners dated February 23, 2017.</p>	<p style="text-align: right;">Page 209</p> <p>1 is this, "Hey, we finished these Memorandums 2 of Understanding, just so you know. Here's a 3 copy. Take a look at it"? Do you recall 4 anything like that? 5 A. I don't recall a specific 6 meeting, but I also don't recall it being as 7 casual as "Here's the document." I don't know 8 specifically. 9 Q. Now, in those memorandum OCS is 10 identified here; is that correct? 11 A. I am not sure. I don't have 12 the documents committed to memory. 13 Q. I will go through that. I was 14 trying to speed this along here. What was 15 your understanding as to the purpose of those 16 two documents? Again, this is February of 17 2017. 18 A. I actually don't know. So I 19 would like to see the documents and form that 20 response. 21 Q. Okay. 22 MR. PICCERILLI: Let's go off 23 the video record, please. 24 THE VIDEOGRAPHER: Off the</p>

## CONFIDENTIAL

<p style="text-align: right;">Page 210</p> <p>1 video record, 3:11.  2  3 (Off the record)  4  5 MR. SCHWABENLAND: We had a  6 discussion off the record. All  7 counsel have agreed to continue this  8 deposition. Counsel for the  9 university has to leave at 3:15, now.  10 Counsel for Ms. Roe has to leave at  11 4:00. Counsel for the university has  12 agreed to reproduce Mr. Bordak,  13 hopefully at a soon time --  14 soon-to-be-scheduled time, because we  15 are on a short time schedule.  16 THE VIDEOGRAPHER: We're back  17 on the record, 3:15.  18 MR. SCHWABENLAND: Mr. Bordak,  19 we have taken a lot of breaks because  20 there's been some logistical issues  21 that all counsel had to work out and  22 so we were not able to get your  23 deposition done today and certain  24 counsel have to leave at 3:15 and 4:00</p>	<p style="text-align: right;">Page 212</p> <p>1  2 (Deposition adjourned. Time  3 noted, 3:16 p.m.)  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24</p>
<p style="text-align: right;">Page 211</p> <p>1 and it's now 3:15. So all counsel  2 have agreed to conclude your  3 deposition for today, with the  4 understanding that we are going to try  5 to reschedule this as soon as possible  6 and we'll bring you back in and  7 conclude your deposition. So I thank  8 you for your patience and that's fine.  9 Do you --  10 MR. PICCERILLI: The only other  11 thing I wanted to note is that we  12 started this deposition at about 10:00  13 today and it's now 3:15. The witness  14 has not had an opportunity for lunch.  15 We have had some breaks, mainly, and  16 the longest break was to consult with  17 the judge on a particular issue. So  18 it was certainly no doing of the  19 witness's that we had those breaks.  20 MR. SCHWABENLAND: No, not at  21 all. He's been very patient.  22 THE VIDEOGRAPHER: The time is  23 3:16. We're now going off the video  24 record.</p>	<p style="text-align: right;">Page 213</p> <p>1  2 C E R T I F I C A T E  3  4  5  6 I do hereby certify that I am a  7 Notary Public in good standing, that  8 the aforesaid testimony was taken  9 before me, pursuant to notice, at the  10 time and place indicated; that said  11 deponent was by me duly sworn to tell  12 the truth, the whole truth, and  13 nothing but the truth; that the  14 testimony of said deponent was  15 correctly recorded in machine  16 shorthand by me and thereafter  17 transcribed under my supervision with  18 computer-aided transcription; that the  19 deposition is a true and correct  20 record of the testimony given by the  21 witness; and that I am neither of  22 counsel nor kin to any party in said  23 action, nor interested in the outcome  24 thereof.  WITNESS my hand and official  seal this 11th day of July 2018.        Kimberly A. Wornczyk  Notary Public</p>

54 (Pages 210 - 213)

Veritext Legal Solutions

215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830

## CONFIDENTIAL

Page 214

1  
2  
3       INSTRUCTIONS TO WITNESS  
4  
5  
6       Please read your deposition over  
7 carefully and make any necessary corrections.  
8 You should state the reason in the appropriate  
9 space on the errata sheet for any corrections  
10 that are made.  
11       After doing so, please sign the  
12 errata sheet and date it.  
13       You are signing same subject to the  
14 changes you have noted on the errata sheet,  
15 which will be attached to your deposition.  
16       It is imperative that you return the  
17 original errata sheet to the deposing attorney  
18 within thirty (30) days of receipt of the  
19 deposition transcript by you. If you fail to  
20 do so, the deposition transcript may be deemed  
21 to be accurate and may be used in court.  
22  
23  
24

Page 216

1       ---  
2       ACKNOWLEDGMENT OF DEPONENT  
3       ---  
4       I, WILLIAM BORDAK, do hereby certify  
5 that I have read the foregoing pages 1 to 212  
6 and that the same is a correct transcription  
7 of the answers given by me to the questions  
8 therein propounded, except for the corrections  
9 or changes in form or substance, if any, noted  
10 on the attached Errata Sheet.  
11  
12       DATE  
13       SIGNATURE  
14  
15       Subscribed and sworn to  
16 before me this       day of         
17       , 20\_\_.  
18  
19       My commission expires:  
20         
21         
22         
23       Notary Public  
24

Page 215

1       E R R A T A  
2       ---  
3       PAGE       LINE       CHANGE  
4       ---  
5       Reason for  
6       Change:         
7       ---  
8       Reason for  
9       Change:         
10       ---  
11       Reason for  
12       Change:         
13       ---  
14       Reason for  
15       Change:         
16       ---  
17       Reason for  
18       Change:         
19       ---  
20       Reason for  
21       Change:         
22       ---  
23       Reason for  
24       Change       Job No. PA2957467

55 (Pages 214 - 216)





217

218

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN DOE,

Plaintiff,

vs.

ST. JOSEPH'S UNIVERSITY :

and :

JANE ROE,

Defendants. : NO. 18-2044

FRIDAY, JULY 13, 2018

CONFIDENTIAL

Continued videotaped deposition of  
WILLIAM BORDAK, taken at the law offices of  
Schwabenland and Ryan, PC, 955 Old Eagle  
School Road, Suite 306, Wayne, Pennsylvania,  
commencing at 8:28 a.m. before Kimberly A.  
Wornczyk, a Registered Professional Reporter,  
New Jersey Certified Court Reporter,  
(Certificate No. 30X100223500), and Notary  
Public in and for the Commonwealth of  
Pennsylvania.

VERITEXT LEGAL SOLUTIONS  
MID-ATLANTIC REGION  
1801 Market Street - Suite 1800  
Philadelphia, Pennsylvania 19103

APPEARANCES:

LAW OFFICES OF JOHN MIRABELLA  
BY: JOHN MIRABELLA, ESQUIRE  
1600 Market Street  
Suite 1810  
Philadelphia, Pennsylvania 19103  
215-422-4991  
Representing the Plaintiff, John Doe

MINTZER SAROWITZ ZERIS LEDVA &  
MEYERS, LLP  
BY: RICHARD E. CHESNEY, JR., ESQUIRE  
1500 Market Street  
Suite 4100  
Philadelphia, Pennsylvania 19102  
215-735-7200  
rchesney@defensecounsel.com  
Representing the Defendant, Jane Roe

MONTGOMERY MCCrackEN  
BY: ALBERT L. PICCERILLI, ESQUIRE  
1735 Market Street  
Philadelphia, Pennsylvania 19103  
215-772-7590  
apiccerilli@mmwr.com  
Representing the Defendant, St.  
Joseph's University

ALSO PRESENT:

Marianne Schimelfenig, Esquire  
(St. Joseph's University)

Robert Foulk, Jr.  
(Videographer)

219

220

INDEX

WITNESS PAGE

WILLIAM BORDAK  
By Mr. Mirabella 223

EXHIBITS

NUMBER DESCRIPTION PAGE

2 Cover page Division of Student  
Life, Summary Report 2016-2017, 240  
By the Numbers 2016-2017

3 Sexual Misconduct Policy, 243  
Community Standards Summary, SJC000332-000333

4 Documents Re: Incident Occurrence 273  
Date February 23, 2018, Notice of  
Process, SJC000438-000440

5 Documents Re: Incident Occurrence 306  
Date February 23, 2018, Respondent -  
Pre-Investigation Meeting Checklist, SJC000441-000446

6 Interim Sexual Misconduct Policy: 306  
Pre-Investigation Meeting,

7 Documents Re: Incident Occurrence 313  
Date February 23, 2018, Responses  
to Appeal Submission, SJC000582-  
000589

EXHIBITS

NUMBER DESCRIPTION PAGE

8 September 2017, Q&A on Campus Sexual Misconduct 401

9 9/22/17 Dear Colleague Letter 401

10 Prohibited Conduct, SJU001180-001181 426

11 Report, SJU000335 426

221

222

1 DEPOSITION SUPPORT INDEX  
 2 ---  
 3 INSTRUCTION NOT TO ANSWER:  
 4 Page Line  
 5 (None)  
 6  
 7  
 8 REQUEST FOR PRODUCTION OF DOCUMENTS:  
 9 Page Line Description  
 10 291 19 Changes to Notice  
 11 of Process letter  
 12 292 20 Changes to  
 13 Pre-Investigation Meeting  
 14 367 5 Checklist template  
 15 Coursebook information  
 16  
 17 STIPULATIONS:  
 18 Page Line  
 19 222 1  
 20  
 21 QUESTIONS MARKED:  
 22 Page Line  
 23 (None)  
 24

1 (It is agreed by and among  
 2 counsel for the respective parties  
 3 that sealing, filing, and  
 4 certification are hereby waived, and  
 5 that all objections, except as to the  
 6 form of the question, be reserved  
 7 until the time of trial.)  
 8 ---  
 9 THE VIDEOGRAPHER: This is the  
 10 continuation of the videotaped  
 11 deposition of William Bordak taken on  
 12 Friday, July 13th, 2018 and at this  
 13 time the court reporter will swear in  
 14 the witness.  
 15 ---  
 16 WILLIAM BORDAK, having been  
 17 duly sworn, was examined and testified  
 18 under oath as follows:  
 19 ---  
 20 THE VIDEOGRAPHER: You may  
 21 begin the questioning. We are on the  
 22 record at 8:28.  
 23 ---  
 24 EXAMINATION

223

224

1 ---  
 2 BY MR. MIRABELLA:  
 3 Q. Mr. Bordak, this is the  
 4 continuation of your deposition that was  
 5 started last week. I think Mr. Schwabenland  
 6 did the questioning. In fact, I am certain he  
 7 did, because I sat next to him. I am going to  
 8 be doing the questioning today. I understand,  
 9 speaking with your counsel off the record, you  
 10 wanted to clarify an answer or testimony you  
 11 gave in that deposition.  
 12 A. Yes.  
 13 Q. And I will say that you're free  
 14 to do so. You're also free to do so in  
 15 response to answers you give me up until the  
 16 time we close the record as well. Anyway,  
 17 please proceed.  
 18 A. Okay. I can clarify it now.  
 19 Q. Oh. As to the earlier matter,  
 20 I would prefer you do that now, since I don't  
 21 know what it is.  
 22 A. Yes. Sorry. I misunderstood.  
 23 So, as I recall, a question last Friday came  
 24 up during the first deposition about allowance

1 for advisers to review documents and whether  
 2 it was my recollection that that had ever  
 3 happened. At that time on Friday it was true,  
 4 my recollection that it had not, but through  
 5 the production of documents requested by you  
 6 all that I've produced those documents and in  
 7 preparation of those documents I did see that  
 8 there was one instance where there was an  
 9 allowance for an adviser to review documents.  
 10 Q. And that would be in the  
 11 documents that were produced in connection  
 12 with some of the other SMP documentation of  
 13 investigations that was produced?  
 14 A. Correct. Correct.  
 15 Q. And was that an  
 16 investigation -- can you identify that  
 17 particular case in any general way so I can --  
 18 A. It was --  
 19 MR. PICCERILLI: Do you know  
 20 the number --  
 21 BY MR. MIRABELLA:  
 22 Q. I certainly don't mean the  
 23 name. I meant in terms of either the  
 24 allegations --

225

1 A. I would be guessing, but if I  
 2 took a look at that list I might narrow it  
 3 down in terms of a year or time frame. It  
 4 certainly wasn't this academic year. I know  
 5 with certainty that it wasn't this academic  
 6 year. We have already looked at that list.  
 7 Q. Sure.  
 8 MR. MIRABELLA: Now, do you  
 9 have the Bates label? The list is  
 10 331, I think, 332, or 361, 362?  
 11 MR. PICCERILLI: I don't have  
 12 it, no. I don't have any documents  
 13 with me.  
 14 MR. MIRABELLA: I may have  
 15 some. Bear with me just a second. I  
 16 will pull up that list for you.  
 17 MR. PICCERILLI: Can we go off  
 18 the video record?  
 19 MR. MIRABELLA: I am optimistic  
 20 that we can get to it quickly. See if  
 21 I'm proven right or wrong. Good  
 22 suggestion. Let's go off the video.  
 23 THE VIDEOGRAPHER: Off the  
 24 record, 8:31.

227

1 documents. Can you tell me what documents you  
 2 looked at following the deposition and before  
 3 you arrived today other than that particular  
 4 document?  
 5 A. That particular document, so I  
 6 looked at the summary of findings of fact,  
 7 determinations of outcome -- I'm not recalling  
 8 the title correctly -- but those documents  
 9 that were produced, those are the ones that I  
 10 looked at.  
 11 Q. Did you look at any other  
 12 documents?  
 13 A. No.  
 14 Q. Did you review your deposition  
 15 testimony?  
 16 A. No.  
 17 Q. Did you do any research?  
 18 A. No.  
 19 Q. Having seen that in the  
 20 documentation it refreshes your recollection  
 21 that there was a circumstance where an adviser  
 22 was permitted -- what was the adviser  
 23 permitted to see in that case?  
 24 A. As I recall, it was the

226

1  
 2 (Off the record)  
 3  
 4 THE VIDEOGRAPHER: We are on  
 5 the record, 8:32.  
 6 BY MR. MIRABELLA:  
 7 Q. If need be, we can attach and  
 8 mark this as an exhibit, but I'm going to give  
 9 you pages 1361 and 1326 of SJU's production,  
 10 which I think has the list. Just take a peek  
 11 at that and let me know which one you believe  
 12 it is.  
 13 A. I believe -- and I'm going to  
 14 clarify it with, I am not certain, but I  
 15 believe -- you wanted the number or --  
 16 Q. Yes.  
 17 A. 68252.  
 18 Q. That's the StarRez number?  
 19 A. Yes, the StarRez number, what  
 20 we call our incident report number. I believe  
 21 based on this, but I can't be certain without  
 22 names.  
 23 Q. Understood. Now, you mentioned  
 24 that that came as a result of reviewing

228

1 investigative report.  
 2 Q. And at what point in the  
 3 proceedings?  
 4 A. It was -- I believe -- I am not  
 5 certain at what point, but it was after an  
 6 outcome, because there was an investigative  
 7 report, and it may have even been after the  
 8 appeal period concluded, but I can't be  
 9 certain.  
 10 Q. And do you know why in that  
 11 instance the adviser was permitted to see it?  
 12 A. I do not.  
 13 Q. Was the adviser affiliated  
 14 directly with SJU or not?  
 15 A. No.  
 16 Q. Who gave the adviser authority,  
 17 consent, permission or whatever to access to  
 18 the investigative report?  
 19 A. It was through a conversation  
 20 with counsel that the decision was reached.  
 21 With our general counsel the decision was  
 22 reached to afford the opportunity for the  
 23 adviser to see the documents.  
 24 Q. All right. So it was at the

229

230

1 direction of general counsel?

2 A. I don't know if it was at the  
3 direction of or through consultation with.

4 Q. Did you believe you had  
5 authority to give that access without -- with  
6 the approval of general counsel?

7 A. No.

8 Q. The questioning left off at  
9 your last deposition one area which I probably  
10 will eventually get back to, but I am going to  
11 move into some other areas and I am going to  
12 try to when possible tell you when I'm  
13 changing either topics or areas of questioning  
14 in advance so that it is not so jarring or you  
15 can understand the questions in context.

16 As I understood it from earlier  
17 testimony and other depositions, Roe changed  
18 her residential housing during her freshman  
19 year. I don't know if you're familiar with  
20 that testimony or not.

21 MR. PICCERILLI: Objection to  
22 form.

23 BY MR. MIRABELLA:

24 Q. Outside of the testimony are

1 you aware that Roe changed her residential  
2 housing?

3 A. Yes.

4 Q. All right. Roe also testified,  
5 I will represent to you, that she had a very  
6 difficult -- I shouldn't paraphrase. I think  
7 that bullying was the word that she used in  
8 connection with her original housing and her  
9 suite mates. Did Roe file a complaint or  
10 articulate a complaint or communicate a  
11 complaint to Community Standards about her  
12 suite mates or about her housing or about any  
13 issue other than the one she brought about  
14 concerning John Doe?

15 MR. PICCERILLI: Objection to  
16 form.

17 THE WITNESS: Are you asking  
18 about -- that's a pretty broad range.

19 BY MR. MIRABELLA:

20 Q. It's a very broad question. It  
21 is a broad question. I was trying to actually  
22 make it less broad. Are you aware that Roe  
23 has articulated or communicated any complaints  
24 about other students other than John Doe to

231

232

1 Community Standards?

2 A. Yes.

3 Q. Do you know on how many  
4 occasions?

5 A. I do not.

6 Q. Do you know if it's been more  
7 than one?

8 A. There's been more than one  
9 report shared. I don't know that I would  
10 characterize that as complaining about another  
11 student.

12 Q. All right. There has been more  
13 than one report. What do you mean?

14 A. There's been --

15 Q. And so it's perfectly clear, I  
16 don't want to hear anything identifying the  
17 other student.

18 A. Sure. Yes.

19 Q. So just tell me what you can  
20 share about any other communications from Roe  
21 that you're aware of to Community Standards.

22 A. As you mentioned, there was a  
23 history with roommates in first housing. I  
24 don't know the specifics of that. I don't

1 know how that initially came to the  
2 university's attention. A lot of that is  
3 addressed through residence life as proxies  
4 for Community Standards process. So I don't  
5 know the particulars, but I know that there  
6 was that instance. And there was another  
7 instance where a student entered her room with  
8 the door locked and that was reported to the  
9 institution for follow-up -- with the door  
10 unlocked, I should say. I misspoke.

11 Q. Are both those in the StarRez  
12 database?

13 A. Yes, they are.

14 Q. Can the StarRez database, can  
15 you run a query identifying with Roe's student  
16 I.D. number as to any other complaints or  
17 issues that she has been either the  
18 complainant in or respondent in?

19 A. Yes.

20 Q. Has Roe been the respondent of  
21 any matters in the Office of Community  
22 Standards?

23 A. Yes.

24 Q. Can you tell me how many?

233

1 A. No.  
 2 Q. Because you can't tell me or  
 3 you don't know?  
 4 A. I do not know.  
 5 Q. But at least one?  
 6 A. Yes.  
 7 Q. Can you tell me, without  
 8 identifying anything about the complainant,  
 9 the nature of the Community Standards issue?  
 10 A. The only issues --  
 11 MR. CHESNEY: Object to form.  
 12 THE WITNESS: The only one that  
 13 I recall was drug related, marijuana  
 14 related, but I couldn't speak to  
 15 specifics about that incident or other  
 16 incidents.  
 17 BY MR. MIRABELLA:  
 18 Q. Roe testified that she was on  
 19 probation for using marijuana at St. Joe's.  
 20 Did that probation come from an investigation  
 21 that happened through Community Standards?  
 22 MR. CHESNEY: Object to form.  
 23 THE WITNESS: I couldn't answer  
 24 that.

235

1 A. I don't know who ultimately  
 2 was -- it was a shared project with residence  
 3 life, because it's also used for housing  
 4 assignments. StarRez, the Rez part of it is  
 5 residential. The primary focus of the product  
 6 is for housing assignments.  
 7 Q. You are not directly involved  
 8 with residential life, correct?  
 9 A. Correct.  
 10 Q. Can you explain your  
 11 understanding of how residential life uses the  
 12 database?  
 13 A. For the housing assignments.  
 14 So that is where you live -- where a student  
 15 lives, that's recorded within StarRez. That's  
 16 where the billing, check-in, checkout, that's  
 17 what determines the cost of room for the  
 18 student that's billed.  
 19 Q. The StarRez numbers that are  
 20 assigned to the SMP investigations, where do  
 21 they come from or how are they generated?  
 22 A. It's sequential, so whatever  
 23 report that's generated it's one more StarRez  
 24 number.

234

1 BY MR. MIRABELLA:  
 2 Q. Because it's a poorly phrased  
 3 question or because you don't know?  
 4 A. I don't know the particulars  
 5 about the incident.  
 6 Q. So let me ask it a different  
 7 way. If a student is on probation -- and I'm  
 8 just going to say for smoking marijuana -- is  
 9 there any other office at the school that  
 10 would investigate and impose a sanction for  
 11 doing that outside of Community Standards?  
 12 A. No.  
 13 Q. Tell me a little bit about how  
 14 the StarRez database -- first off, when was it  
 15 started?  
 16 A. January 2015 -- 2011. Sorry.  
 17 I misspoke. January of 2011 we started using  
 18 StarRez as our tracking software.  
 19 Q. What had you used before that,  
 20 if anything?  
 21 A. An in-house system through  
 22 what's called Banner.  
 23 Q. Who was responsible for getting  
 24 StarRez up and running?

236

1 Q. What if it's not a complaint  
 2 involving sexual misconduct? Does it still  
 3 get a StarRez number?  
 4 A. Yes.  
 5 Q. What if it is an anonymous  
 6 complaint, does it still get a StarRez number?  
 7 A. If it is communicated to  
 8 Community Standards, yes. If it is reported  
 9 to the Title IX coordinator that may not be  
 10 within our system. That's a separate tracking  
 11 that the Title IX coordinator maintains.  
 12 Q. Does the Title IX coordinator  
 13 always share Title IX complaints with  
 14 Community Standards?  
 15 A. Not always.  
 16 Q. Can you explain how that works,  
 17 because there's some overlap, I would assume,  
 18 but I don't work in Title IX or in your  
 19 office. If you can just explain how the  
 20 parallel systems work?  
 21 A. Yeah. They are not really  
 22 parallel systems. So if a complaint goes to  
 23 the Title IX coordinator and not anyone else,  
 24 so a student goes to the Title IX coordinator



237

238

1 and shares or discloses an incident, if there  
2 is no known respondent, so there would be no  
3 Community Standards process, it would not be  
4 shared with my office, because there would be  
5 no Community Standard or disciplinary process  
6 to address the complaint. All right. Or if  
7 it's a non-student complainant it would not be  
8 shared with my office, because there's no  
9 student respondent to be addressed through a  
10 disciplinary process. So those complaints may  
11 not be in our StarRez system if reported  
12 directly and exclusively to Dr. Perry, the  
13 Title IX coordinator.

14 Q. And could there be other  
15 circumstances that you're unaware of where the  
16 Title IX coordinator doesn't share a  
17 complaint with your office?

18 A. Yes.

19 Q. To your knowledge, does the  
20 Title IX coordinator have a way of cataloging  
21 or tracking or identifying all of the  
22 complaints that are shared with her office  
23 that are not shared with Community Standards?

24 A. Yes.

1 Q. Do you know how that system is  
2 organized or —

3 A. Not specifically.

4 Q. Is it some sort of computer  
5 software?

6 A. I am not sure.

7 Q. But you know some system  
8 exists?

9 A. Yes.

10 Q. The StarRez system started  
11 in — was started in 2011, correct?

12 A. January of 2011.

13 Q. The numbers on each incident  
14 are handled sequentially. How many StarRez  
15 numbers are generated roughly per year, just  
16 by way of estimate, through Community  
17 Standards?

18 A. So the StarRez — it's  
19 important to note that the StarRez software  
20 also houses reports that are not handled  
21 through Community Standards. So our residence  
22 life office uses it as a warehouse for other  
23 reports that might come through, whether it's  
24 facility related or residence hall related.

239

240

1 So a pipe bursts and there's a report  
2 generated on that, that's in StarRez as well.

3 Q. Fire code violations, which  
4 one —

5 A. Oh, it would be Community  
6 Standards. Anything that would have a  
7 Community Standards follow-up would be going  
8 through Community Standards. We use StarRez  
9 as a warehouse for all incident reports that  
10 involve students or student residence halls.  
11 So if there is a -- like I said, a pipe bursts  
12 or a broken window, like, accidental, ceiling  
13 tile broken, accidental, those are all in  
14 StarRez as well. So that's part of the  
15 numbering.

16 Q. I didn't intend to get into  
17 this in much detail, so I wasn't planning on  
18 marking it as an exhibit. The division of  
19 student life puts out an annual report. I  
20 guess annually. Are you familiar with that?

21 A. Yes.

22 Q. You're welcome to see it to  
23 review it. I want to ask you just one  
24 question about one of the entries and then you

1 can take as much time with it as you want. So  
2 it has a Community Standards by the numbers  
3 that says, "16442 incident reports addressed  
4 through Community Standards process (7 percent  
5 decrease from last academic year)."

6 MR. PICCERILLI: Can we have an  
7 identification of the document?

8 MR. MIRABELLA: Yes. We may  
9 have to mark that whole thing as an  
10 exhibit just so —

11 MR. PICCERILLI: Can we mark it  
12 before you ask him questions about it?

13 MR. MIRABELLA: We'll mark that  
14 as Exhibit-1 -- I'm sorry -- whatever  
15 sequential number we are up to from  
16 the other deposition.

17  
18 (Whereupon, Exhibit Bordak-2  
19 was marked for purposes of  
20 identification.)

21  
22 BY MR. MIRABELLA:

23 Q. Mr. Bordak, did you have a  
24 chance to look at that statistic or data

241

242

1 point?  
 2 A. It closed. I want to make  
 3 sure -- this is the page you're looking at?  
 4 Q. Yes.  
 5 A. I just want to make sure. It  
 6 would be Page 4 of that document.  
 7 Q. Can you just read into the  
 8 record the Community Standards paragraph so I  
 9 can ask you about it in a little bit of  
 10 context?  
 11 A. Sure. The header is "Community  
 12 Standards," the first bullet, "16442 Incident  
 13 Reports Addressed Through Community Standards  
 14 Process (7 percent decrease from last academic  
 15 year)." The second bullet, "757 Unique  
 16 Undergraduate Day Students Addressed Through  
 17 the Community Standards Process (8 percent  
 18 decrease from last academic year, 15 percent  
 19 of undergraduate day enrollment)." And the  
 20 third bullet, "336 Violations of The Alcohol  
 21 and Drug Policies (23 percent decrease from  
 22 last academic year)."  
 23 Q. The first number, is that  
 24 16,000?

1 A. No. I think that's a typo on  
 2 this document. I think 442 sounds like a more  
 3 appropriate number. I wonder if that is 16,  
 4 17 in the production of this document, that  
 5 there was an error in this. I can't say for  
 6 certain, but we would not have 16,000 reports  
 7 in an academic year.  
 8 Q. Right. And that also seemed to  
 9 reconcile with the StarRez sequential  
 10 numbering system.  
 11 A. I am inclined to say that the  
 12 442 is more in line with what we would see in  
 13 a year.  
 14 Q. And to be fair, you already  
 15 said, the best you can tell, it appears to be  
 16 some type of typo, but you're confident that  
 17 the 16,000 is not reflective of --  
 18 A. Yes.  
 19 Q. We'll leave that. I am  
 20 finished with questioning on that for a  
 21 moment. Just leave that with the court  
 22 reporter.  
 23 MR. MIRABELLA: So let's mark  
 24 his as Exhibit-3.

243

244

1  
 2 (Whereupon, Exhibit Bordak-3  
 3 was marked for purposes of  
 4 identification.)  
 5  
 6 BY MR. MIRABELLA:  
 7 Q. Mr. Bordak, we are on the video  
 8 and I don't want to rush you, but I know we  
 9 have some time constraints. Do you need time  
 10 to review this before I ask you some questions  
 11 about it?  
 12 MR. PICCERILLI: He should  
 13 review it at least briefly.  
 14 MR. MIRABELLA: Sure.  
 15 THE VIDEOGRAPHER: Off the  
 16 record, 8:51.  
 17  
 18 (Off the record)  
 19  
 20 THE VIDEOGRAPHER: On the  
 21 record, 8:53.  
 22 BY MR. MIRABELLA:  
 23 Q. Mr. Bordak, you had an  
 24 opportunity for a few minutes to review these

1 two pieces of paper marked as Exhibit-3. Can  
 2 you identify for the record what they are?  
 3 A. The first page is a summary  
 4 document that we create for sexual misconduct  
 5 investigations to kind of have in one place  
 6 all of the dates and information regarding an  
 7 incident more easily accessible. And the  
 8 second page is where we log when the  
 9 respondent and complainant review the  
 10 investigative reports just for our recording.  
 11 Q. Let's start with the top sheet,  
 12 the Community Standards summary. Are these  
 13 prepared for every matter that Community  
 14 Standards investigates or that there is a  
 15 matter looked into by Community Standards?  
 16 A. As the title would suggest,  
 17 it's for sexual misconduct policy  
 18 investigations. So all sexual misconduct  
 19 policy investigations have these documents  
 20 created.  
 21 Q. Were these documents created  
 22 before the interim sexual misconduct policy  
 23 was put in place in 2015?  
 24 A. No.

245

246

1 Q. Was there a similar or some  
2 sort of analogous record created for sexual  
3 misconduct investigations before 2015?  
4 A. No.  
5 Q. Is there a Community Standards  
6 summary sheet for investigations of Community  
7 Standards violations that don't involve sexual  
8 misconduct?  
9 A. No.  
10 Q. I am going to ask you some  
11 questions about the information. Who prepared  
12 this document Bates labeled 332?  
13 A. I did.  
14 Q. Do you prepare all the  
15 Community Standards summaries for sexual  
16 misconduct policy investigations?  
17 A. I do.  
18 Q. So I am going to ask you about  
19 the interim measures box, even though that's  
20 just the first thing listed. Do you see where  
21 I'm referring to? It's sort of the upper  
22 left.  
23 A. Yes.  
24 Q. What's the "Sent to banned"

1 refer to?  
2 A. So bannedalias@sju.edu is an  
3 email alias created by security and that is an  
4 email alias distribution list that any contact  
5 restrictions or area restrictions or interim  
6 measures that public safety would need to be  
7 aware of that we send it to.  
8 Q. All right. And what is sent to  
9 public safety, what information?  
10 A. If it's a contact restriction  
11 it would be student name. There are contact  
12 restrictions in place between student name and  
13 student name.  
14 Q. Anything further?  
15 A. No.  
16 Q. And beneath that it says,  
17 "Recorded in StarRez." That just means that  
18 the contact restrictions being communicated to  
19 the safety office was sent?  
20 A. We also record it in StarRez as  
21 an interim measure so that if something were  
22 to happen, a violation of that contact  
23 restriction or an area restriction, we would  
24 have a record that it was in place.

247

248

1 Q. All right. Moving down the  
2 document a little bit, it has incident date,  
3 report date, and then a 60-day date. Do you  
4 see that?  
5 A. Yes.  
6 Q. And then beneath that it has  
7 outcome final date. Can you explain to me  
8 what that means?  
9 A. The incident date is the date  
10 of the incident. The reported date is the  
11 date that it was reported to the university.  
12 The 60 day is 60 day from reported date. The  
13 outcome final date is when, if there is no  
14 appeal – well, even if – so when the outcome  
15 is final. So at the conclusion of an appeal  
16 period if there was an appeal and an outcome  
17 wasn't changed or an appeal and there was an  
18 amendment and – so when the outcome is final  
19 we record that date.  
20 Q. There is Title IX guidance  
21 about the importance of timely investigations  
22 and the term 60 days is frequently used. Is  
23 it your understanding that the 60 days  
24 includes the appeal period or does not include

1 the appeal period under Title IX?  
2 A. Includes the appeal period.  
3 Q. Moving down in that same side  
4 of the document, it says "Complainant PIM  
5 Notice." Do you see that?  
6 A. Yes.  
7 Q. And then "Respondent PIM  
8 Notice," what does that refer to?  
9 A. Pre-investigation meeting  
10 notice. So it would be the communication to  
11 the student scheduling the pre-investigation  
12 meeting.  
13 Q. Is that communication in  
14 writing?  
15 A. Yes.  
16 Q. And is that also referred to as  
17 notice of process?  
18 A. Yes.  
19 Q. Is any other communication in  
20 writing done, given to the respondent, other  
21 than the Notice of Process Letter?  
22 A. When the contact restriction is  
23 put in place that's in writing.  
24 Q. So at the time of the

1 pre-investigation meeting the only  
 2 documentation from the school other than a  
 3 contact restriction would be the information  
 4 that's set forth in the notice of process?  
 5 A. Can you repeat that, please?  
 6 Q. Sure. As of the time the  
 7 respondent appears at the pre-investigation  
 8 meeting the only thing in writing from the  
 9 school that the student has – the respondent  
 10 has received is the information in writing  
 11 that's set forth in the Notice of Process  
 12 Letter?  
 13 A. Yes, unless there was  
 14 additional email communication with the  
 15 student that was more.  
 16 Q. In this case the Notice of  
 17 Process Letter was prepared or signed by you?  
 18 A. I don't recall.  
 19 Q. Would that be uncommon?  
 20 A. No.  
 21 Q. If it is signed by you does  
 22 that mean necessarily that you prepared it?  
 23 A. Yes.  
 24 Q. How do you prepare the Notice

1 of Process Letter?  
 2 A. We have a template that we –  
 3 when I say we, in Community Standards, and so  
 4 if it was from me I would take the template  
 5 and add any other relevant information for  
 6 this complaint and any additional information  
 7 that might need to be included that's specific  
 8 to the specific complaint.  
 9 Q. All right. We'll mark as  
 10 Exhibit-4 the Notice of Process Letter. I  
 11 want to ask you some questions about it, but I  
 12 think it's probably smarter to get through  
 13 this document first so that we can set it  
 14 aside and then change the general area of  
 15 questioning.  
 16 Continuing on with the  
 17 Community Standards summary document, is it  
 18 reasonable to infer or does SJU consider that  
 19 in this instance the outcome date was outside  
 20 of the 60-day period required by Title IX?  
 21 A. I don't believe the 60 days is  
 22 required by Title IX.  
 23 Q. And just explain what you mean.  
 24 A. Sixty days is not required by

1 Title IX.  
 2 Q. What is the significance, if  
 3 any, of 60 days?  
 4 A. In our policy we say that in  
 5 most cases matters would be concluded within  
 6 60 days and we do that to provide some notice  
 7 to students about what we anticipate at a  
 8 maximum that process might look like, but  
 9 there is always – not always, but there is  
 10 certainly times when that process concludes  
 11 outside of the 60 day. So this one is three  
 12 days outside of the 60 day.  
 13 Q. And to your understanding, is  
 14 there any direct either regulation or guidance  
 15 in Title IX that says the investigation should  
 16 be concluded within 60 days?  
 17 A. I am not sure the exact  
 18 language, but I know it's not must be  
 19 concluded.  
 20 Q. Along that same track, there  
 21 was an appeal in this case, correct?  
 22 A. Correct.  
 23 Q. All right. And the appeal was  
 24 decided prior to the time the respondent had

1 an opportunity to review the investigative  
 2 file. Is that also common practice at  
 3 Community Standards?  
 4 A. That would be up to the  
 5 student. So I wouldn't say it's common  
 6 practice. We are going to proceed with our  
 7 process. If the student – when the student  
 8 comes in to review the investigative report is  
 9 up to the student.  
 10 Q. Well, it's not entirely up to  
 11 the student because he has to give Community  
 12 Standards notice, correct?  
 13 A. He has to schedule a time. And  
 14 we do that mostly so that both students  
 15 involved in the matter aren't in the office at  
 16 the same time.  
 17 Q. And if he's bringing an adviser  
 18 he has to give advance notice?  
 19 A. Unless circumstances call for  
 20 an expedited, which – if a student said that,  
 21 "I really need the adviser tomorrow," we would  
 22 consider that in terms of whether it's  
 23 expedited.  
 24 Q. There were communications in

253

1 this case about John Doe scheduling the  
 2 meeting and seeking accommodations and the  
 3 exchange of emails, correct?  
 4 A. Yes.  
 5 Q. Was he ever advised that the  
 6 appeal would be decided regardless of when he  
 7 reviewed the investigative documents?  
 8 A. He was advised of what the  
 9 appeal process is and the appeal process is  
 10 outlined in the policy. So he wasn't advised  
 11 that it would proceed, but he was also not  
 12 advised that it would be stopped.  
 13 Q. There is a time limitation  
 14 after the outcome meeting set forth in the  
 15 policy as to when the complainant or  
 16 respondent can review the file?  
 17 A. I believe, yes.  
 18 Q. All right. And that's five  
 19 days? Is that the time limitation?  
 20 A. I believe so. I don't want to  
 21 misspeak. If you have a policy, I can  
 22 reference.  
 23 Q. I don't have it handy. But  
 24 there is some set time limit, correct?

255

1 the appeal was decided?  
 2 A. At that point he wasn't —  
 3 neither student were able to submit anything  
 4 additional in writing to be heard at the  
 5 appeal or reviewed during the appeal and so  
 6 whether he reviewed the documents on a Tuesday  
 7 or a Saturday, it wouldn't have changed the  
 8 fact that he would not have been able to  
 9 provide additional documentation. So, as we  
 10 saw it, we didn't feel we needed to tell him  
 11 that it was proceeding. He wouldn't have had  
 12 an opportunity to share after the review  
 13 anyways.  
 14 Q. So I am correct he was notified  
 15 that the appeal would continue regardless of  
 16 when he saw the file?  
 17 MR. PICCERILLI: Objection to  
 18 form.  
 19 THE WITNESS: Yes. Can I  
 20 clarify?  
 21 BY MR. MIRABELLA:  
 22 Q. Yes.  
 23 A. He wasn't notified by me, but I  
 24 can't speak -- I am not aware of notification

254

1 A. Yes.  
 2 Q. Was is the purpose of that?  
 3 A. So that the process doesn't  
 4 prolong even further.  
 5 Q. But in this case John Doe asked  
 6 or required additional time beyond the five  
 7 days because of the issue with accommodations  
 8 and his adviser, correct?  
 9 MR. PICCERILLI: Objection to  
 10 form.  
 11 THE WITNESS: Can you repeat  
 12 that again?  
 13 BY MR. MIRABELLA:  
 14 Q. Sure. In this case John Doe  
 15 was communicating that he wanted  
 16 accommodations in connection with his review  
 17 and he had a request and he, in fact, received  
 18 an additional time window to go review the  
 19 file, correct?  
 20 A. Correct.  
 21 Q. And in that process was he ever  
 22 advised that although he was being granted  
 23 additional time to review the file it would  
 24 not affect the timing of how it went and how

256

1 from others, but he was not notified by me.  
 2 Q. In the bottom of that same page  
 3 where it says, "Witnesses added as  
 4 participants in StarRez," do you see that box?  
 5 A. Yes.  
 6 Q. What does that mean?  
 7 A. That was really put on the  
 8 document as a reminder to add as witnesses in  
 9 StarRez those that came through the  
 10 investigative report. We didn't -- we in our  
 11 system record all of the people, all of the  
 12 students involved and indicate participant  
 13 types. And so in an investigative report it  
 14 might outline two or three students who are  
 15 interviewed by the investigator as a witness  
 16 and we want to add them into our system,  
 17 identifying them as witnesses in the matter.  
 18 And so that is just a reminder. Really, this  
 19 sheet is a compilation of important dates. If  
 20 people, you know, had questions on dates it's  
 21 in one place and that's also a reminder for  
 22 some of our housekeeping things, to make sure  
 23 that they are squared away in StarRez.  
 24 Q. All right. Back to the



1 question for a second. Who may or may not  
 2 constitute a witness as far as this document  
 3 is concerned?  
 4 MR. PICCERILLI: I'm sorry.  
 5 Could I hear that question back again?  
 6 ---  
 7 (Whereupon, the court reporter  
 8 read back from the record.)  
 9 ---  
 10 MR. PICCERILLI: Thank you.  
 11 THE WITNESS: They would be  
 12 identified in the investigative report  
 13 in a section called "Witnesses  
 14 Interviewed."  
 15 BY MR. MIRABELLA:  
 16 Q. In the Doe case the only  
 17 witnesses were the complainant and the  
 18 respondent, correct?  
 19 A. I don't recall specifically.  
 20 Q. But a complainant and  
 21 respondent are also considered witnesses?  
 22 A. They are considered  
 23 complainants and respondents in terms of  
 24 coding in our system. A student might share

1 something as if they witnessed it, but if  
 2 they're the complainant in the matter or the  
 3 respondent in the matter they are called the  
 4 complainant and the respondent.  
 5 Q. All right. So I am back to,  
 6 can you tell me who the witnesses were that  
 7 were added?  
 8 A. I am telling you, I can't  
 9 recall in this matter whether there were any  
 10 witnesses. Okay. I think I see what  
 11 you're -- by checking this box does not mean  
 12 affirmatively that witnesses were added. It  
 13 was that that consideration was taken care of  
 14 in this document. I recognize that that  
 15 wording might be speaking to an affirmative  
 16 that I added witnesses. That may not be the  
 17 case. It may just be that that consideration  
 18 of adding witnesses was taken care of and that  
 19 there could have been none added.  
 20 Q. Correct. If there were  
 21 witnesses, they were added. If there were  
 22 none, they weren't added because there weren't  
 23 any?  
 24 A. Right.

1 Q. But that checklist item was  
 2 taken care of?  
 3 A. Yes.  
 4 Q. I think I understand the  
 5 answer.  
 6 A. Yes.  
 7 Q. All right. Same document,  
 8 right side. StarRez number, we talked about  
 9 that earlier?  
 10 A. Yes.  
 11 Q. All right. And, again, that's  
 12 the sequential numbering system we were  
 13 discussing, correct?  
 14 A. Correct.  
 15 Q. When does the StarRez number  
 16 come to life, when they go to the Title IX  
 17 officer, when it comes to your office? How  
 18 does that happen?  
 19 A. When it comes to my office. If  
 20 the initial report for a matter is to an RA,  
 21 for example, and the RA creates their report  
 22 on that information shared with them, that  
 23 creates a StarRez number right there. If it  
 24 does not go to an RA who creates a report but

1 goes to the Title IX coordinator or to public  
 2 safety, we would create that StarRez report  
 3 and assign it a number when we put it into our  
 4 system.  
 5 Q. When do you put it into your  
 6 system if it comes from Title IX?  
 7 A. Within the day that we received  
 8 it.  
 9 Q. Can you tell from this document  
 10 when you received any information about this  
 11 investigation or about this complaint?  
 12 A. I can't.  
 13 Q. Can you tell from this  
 14 document, given all the dates and timing, a  
 15 time frame? For example, it seems safe to  
 16 assume that it was before the notice -- it was  
 17 on or before the notice went out as to the  
 18 pre-investigation meeting?  
 19 A. Yes. It would be safe to -- it  
 20 is on or just before the initial review date,  
 21 because out of practice our initial review  
 22 takes place right -- unless the notice was on  
 23 a Sunday and our initial review was Monday  
 24 morning, then the date is different. So it is

261

262

1 around February 26, 2018.

2 Q. I missed that. Thank you. So  
3 the initial review date in that box, back to  
4 the left side of the document, that refers to  
5 the initial review at the Office of Community  
6 Standards?

7 A. With the Title IX coordinator.

8 Q. Correct. But there is --  
9 someone in the Office of Community Standards  
10 is aware of the incident?

11 A. Right.

12 Q. Can you tell from this document  
13 when the Title IX coordinator's report was  
14 received by your office?

15 A. I can't.

16 Q. What is the -- how does that  
17 work?

18 A. It is --

19 MR. PICCERILLI: Objection to  
20 form.

21 THE WITNESS: In most cases  
22 it's an email. It's a report from the  
23 Title IX coordinator that's emailed to  
24 Community Standards, to me,

1 accompanied with a conversation with  
2 the Title IX coordinator about the  
3 report she is sending.

4 BY MR. MIRABELLA:

5 Q. So if a complainant goes to the  
6 Title IX coordinator and the Title IX  
7 coordinator prepares a first report and then  
8 that's then communicated or emailed to you,  
9 along with a telephone conversation normally?

10 A. Yes.

11 Q. So is it reasonable to infer  
12 that as of the date of the initial review you  
13 had the Title IX coordinator's written  
14 complaint of the incident?

15 A. Yes.

16 Q. Do you communicate -- do you do  
17 anything with that outside of your office?

18 A. Anything with what?

19 Q. Let me rephrase the question  
20 for you. Title IX coordinator gets a  
21 complaint. She does whatever she does with  
22 it, but one of the things she does with it is  
23 email it to your office and discuss it with  
24 you, correct?

263

264

1 A. Yes.

2 Q. Do you take that information  
3 and communicate or send it to anyone outside  
4 your office, assuming there is no contact  
5 restrictions issue?

6 A. There are times when I might  
7 share that with public safety to create a  
8 public safety report and a public safety  
9 tracking of a complaint. There are times when  
10 Mary-Elaine, as Title IX coordinator,  
11 communicates that with security. In this  
12 instance I did not communicate the report with  
13 anyone outside.

14 Q. How come in some instances it's  
15 sent to security and some instances it's not?

16 A. In all instances it's sent to  
17 security. In some instances Mary-Elaine does  
18 it. In some instances I do it.

19 Q. All right. And when and why in  
20 the process is security notified?

21 A. They are -- shortly after the  
22 complaint and the why is for Clery reporting  
23 purposes. And there are some times that  
24 security might get a report -- I don't know in

1 this instance -- with very vague information,  
2 not -- the security doesn't know everything,  
3 but they know enough to meet Clery obligations  
4 of whether a timely warning would need to go  
5 out or -- so that they know that a complaint  
6 has been filed. So it's important -- as our  
7 public safety and security is our Clery  
8 compliance office it is important that they  
9 know of all complaints under our sexual  
10 misconduct policy, so it reported to them.

11 Q. Do they generate an incident  
12 report?

13 A. They do.

14 Q. Do they generate -- are all  
15 complaints sent to public security or just  
16 the ones -- I mean security office -- or just  
17 the ones under the SMP?

18 A. I can't speak to the others.  
19 That would be a process that -- because I  
20 don't know of those -- I don't know of those  
21 when they happened. I don't know what Dr.  
22 Perry does with those reports as far as  
23 reporting to security.

24 Q. I meant it slightly

265

1 differently. If a complaint comes into  
 2 Community Standards that doesn't involve  
 3 sexual misconduct are those always sent to  
 4 security?  
 5 A. If it involves something that  
 6 would be a potentially Clery-reportable crime,  
 7 yes.  
 8 Q. Does Community Standards get  
 9 the incident report generated by the security  
 10 office after the complaint is sent to them?  
 11 A. We do.  
 12 Q. When do you receive it?  
 13 A. We should receive it right  
 14 afterwards, right after it's generated. In  
 15 this instance Community Standards did not  
 16 receive the security report.  
 17 Q. Do you know why?  
 18 A. I don't.  
 19 Q. Why is it sent back to  
 20 Community Standards from security as a general  
 21 matter?  
 22 A. Because it's a document that is  
 23 related to the matter that we are saving  
 24 reports on. And typically these reports --

267

1 get the report for sexual misconduct or Title  
 2 IX than the alcohol. I don't know  
 3 specifically.  
 4 Q. A large group or a smaller  
 5 group?  
 6 A. Smaller, smaller group.  
 7 Q. Have you seen -- you've seen  
 8 over the years in your position the reports  
 9 that come back from the security office for  
 10 sexual misconduct complaints, correct?  
 11 A. Yes.  
 12 Q. In this instance -- and I can  
 13 show it to you if you haven't reviewed it --  
 14 it indicates that a sexual assault was  
 15 committed, not that there was an allegation or  
 16 a complaint. Is that typically the way the  
 17 incident reports read or are generated?  
 18 A. My understanding is that it is  
 19 exactly as reported to the Title IX officer,  
 20 included in the security report. So if the  
 21 complaint was X happened, the security report  
 22 would include that a complaint was X happened.  
 23 Q. And who is, to your knowledge,  
 24 responsible in the security officer presently

266

1 not typically -- they are a copy and paste of  
 2 Dr. Perry's complaint. There is no further  
 3 investigation. There is no further  
 4 information. It's really a -- it's really a  
 5 reporting matter, a tracking matter that  
 6 public safety also has on their end and it's  
 7 in a report generated and a number generated  
 8 for potentially Clery-reportable crimes.  
 9 Q. Do you know where else security  
 10 sends the incident report?  
 11 A. I don't know.  
 12 Q. I know it's not your area. You  
 13 are not working in security. You mentioned  
 14 Clery reporting. Are you aware of any other  
 15 internal SJU offices that would get the  
 16 incident report directly from security?  
 17 A. Not specifically for Title IX  
 18 and sexual misconduct, because I do know that  
 19 they are treated a little differently, in that  
 20 the broad -- the people that would get an  
 21 alcohol violation, that's confronted by  
 22 security, which would be a Clery-reportable  
 23 disciplinary referral. It's a violation of  
 24 liquor law. A different group of people might

268

1 for the Clery reporting?  
 2 A. Ultimately, the director of  
 3 public safety and security.  
 4 Q. Who is that?  
 5 A. Arthur Grover.  
 6 Q. Can I move your attention to --  
 7 direct your attention to the bottom right of  
 8 the document, that box, "File saved to  
 9 StarRez."  
 10 A. Yes.  
 11 Q. The investigation packet sent  
 12 to an investigator, generally speaking, what's  
 13 comprised of that?  
 14 A. The initial complaint and  
 15 student contact information. The investigator  
 16 doesn't have access to our system to get email  
 17 addresses or phone numbers for students, so  
 18 out of process we share that information as  
 19 well as the initial complaint.  
 20 Q. So the initial complaint, in  
 21 this instance Dr. Perry prepared it as a  
 22 result of an interview with the respondent,  
 23 correct?  
 24 A. Correct.

1 Q. What else would have been sent  
2 to the investigator?

3 A. Whatever was a part of the  
4 initial complaint. I don't know specifically  
5 in this case, but sometimes it could be an RA  
6 report if the RA is involved. It can be other  
7 documents that would kind of collectively be  
8 called the complaint.

9 Q. All right. What about, is the  
10 notice letter sent to the investigator?

11 A. Yes.

12 Q. Is the PIM checklist?

13 A. Yes.

14 MR. PICCERILLI: Let him ask  
15 the whole question.

16 THE WITNESS: Sorry.

17 BY MR. MIRABELLA:

18 Q. As a general matter, are any  
19 other of those documents, types of documents  
20 sent to the investigator?

21 A. Yes. As you're asking that I  
22 am recalling specifically -- and if you have  
23 the specifics for this case I'm happy to look  
24 at them -- the complaint, student contact

1 information, and we share procedural documents  
2 with the investigator, for his knowledge, so  
3 that pre-investigation meeting notice, the  
4 checklist, blank adviser forms, because if a  
5 student came with an adviser the investigator  
6 would need to complete that form. I believe  
7 that's it.

8 Q. The next box,  
9 "Banned/Restriction email sent to banned email  
10 alias," can you explain what that means?

11 A. That's what we were talking  
12 about earlier, that the contact restriction  
13 email that was sent to the alias saying "X  
14 student has a contact restriction with X  
15 student," that that notice is saved to the  
16 file.

17 Q. The next box is "All documents  
18 received from investigator." Do you see that?

19 A. Yes.

20 Q. What if there's things that are  
21 pieces of evidence that are not documents?  
22 Are those retained and, if so, how are they  
23 identified?

24 A. I don't know that I know what

1 you mean by something that's not a document.

2 Q. A photograph.

3 A. That would be considered a  
4 document.

5 Q. What about a piece of physical  
6 evidence, like, you know, a broken door lock?

7 A. We've never, in my experience  
8 in over ten years in the office, have had any  
9 physical evidence like that, so I don't know  
10 what we would do in that instance. But,  
11 clearly, we can't save that to an electronic  
12 software.

13 Q. Correct. I guess -- so my next  
14 question was, is there a way to identify that  
15 in the electronic inventory that such a thing  
16 exists?

17 A. Oh, sure. I am sure we would  
18 have it referenced somewhere. Where we would  
19 actually store that artifact, I am not sure.

20 Q. Were you involved in working  
21 with counsel to produce the documents for the  
22 investigation in this case that were produced  
23 in litigation?

24 A. Yes.

1 Q. Is it fair to assume that  
2 everything that's in this bottom right box is  
3 part of the documentation that was produced?

4 A. I don't want to say yes or no  
5 without looking at what I had produced, but  
6 yeah.

7 Q. I don't want to spend the time  
8 going through 1,000 pages.

9 A. So, for instance, the email  
10 sent to the banned email alias, I think that  
11 might be included, but -- those pieces -- so,  
12 clearly, the investigative packet, the  
13 documents received from the investigator, the  
14 appeals, the responses, the summary document  
15 that we are looking at, the notices.

16 Q. So other than the  
17 banned/restriction category, it looks as  
18 though, to the best of your understanding,  
19 everything else has been produced?

20 A. Yes.

21 Q. Briefly, the next page.

22 A. Yes.

23 Q. Is this part of the StarRez  
24 system information?

273

1 A. These are both separate Word  
 2 documents that are saved.  
 3 Q. All right. And the fact that  
 4 they were produced sequentially is not  
 5 relevant to their use in any way?  
 6 A. No.  
 7  
 8 (Whereupon, Exhibit Bordak-4  
 9 was marked for purposes of  
 10 identification.)  
 11  
 12 BY MR. MIRABELLA:  
 13 Q. Mr. Bordak, before I ask you  
 14 about the Notice of Process Letter I just  
 15 wanted to go back to an area I touched on. To  
 16 your knowledge, has Jane Roe made complaints  
 17 of sexual misconduct against any other student  
 18 besides John Doe?  
 19 A. Not to my knowledge.  
 20 Q. And that, as I understand the  
 21 way the StarRez system is set up, would not  
 22 be -- should not be cumbersome to confirm,  
 23 correct?  
 24 A. As far as our records would be.

274

1 So, again, if there was a complaint to the  
 2 Title IX coordinator that was not shared with  
 3 Community Standards I would have no record of  
 4 it in StarRez.  
 5 Q. Correct. But -- and I  
 6 understand that answer. But if you were --  
 7 you could run a query in StarRez and it  
 8 wouldn't take hours to do?  
 9 A. Correct.  
 10 Q. Okay. And if it was determined  
 11 to be discoverable and relevant -- I don't  
 12 know if your counsel would agree or not -- if  
 13 you ran a query in StarRez as to any  
 14 complaints in Community Standards by Jane Roe,  
 15 again, that would not be difficult to do?  
 16 A. Right.  
 17 Q. All right. Notice of process  
 18 letter marked as Exhibit-4, I am going to ask  
 19 you some questions about it. Do you want us  
 20 to turn off the videotape so you can review it  
 21 first or do you think you're okay with going  
 22 forward?  
 23 A. I am fine.  
 24 Q. All right. On your -- on the

275

1 actual exhibit, Exhibit-4, do you think with a  
 2 pen you could identify the areas that are not  
 3 part of the template quickly or is that  
 4 difficult to do?  
 5 A. I could.  
 6 Q. So starting in -- and I don't  
 7 mean with the respondent's name or I.D.  
 8 number. Starting with the first paragraph,  
 9 what part of that is not part of the template?  
 10 A. Like I said, the name, the  
 11 occurrence date, and the location.  
 12 Q. So the name is not in the first  
 13 paragraph, I hope?  
 14 A. The name of the complainant is.  
 15 Q. Oh. Got it. Okay.  
 16 MR. PICCERILLI: That's been  
 17 redacted.  
 18 MR. MIRABELLA: It has been  
 19 redacted.  
 20 BY MR. MIRABELLA:  
 21 Q. So the redacted name of the  
 22 complainant, the date, and the location is not  
 23 part of the template?  
 24 A. Correct.

276

1 Q. Next paragraph, same question.  
 2 A. That's template.  
 3 Q. Next paragraph, that starts  
 4 with pre-investigation meeting, same question.  
 5 A. The name.  
 6 Q. All right. And beneath that is  
 7 a little sort of bullet box with the date of  
 8 the meeting, correct?  
 9 A. Right. So that information,  
 10 the date of the meeting, the location, and who  
 11 it's with would be -- would be adjusted for  
 12 the matter.  
 13 Q. Correct. The next section is a  
 14 section called "Advisers" and there is two  
 15 paragraphs. Is any of that not part of the  
 16 template?  
 17 A. No.  
 18 Q. And then the next section,  
 19 there's two paragraphs. It's still in the  
 20 same page. "Restrictions and Retaliation," is  
 21 any of that not part of the template?  
 22 A. No.  
 23 Q. And the second page, it starts  
 24 with "Support and Resources," is anything on



277

1 this page not part of the template?  
 2 A. No.  
 3 Q. Is the template that you used  
 4 to send the Notice of Process Letter the same  
 5 used in all sexual misconduct cases?  
 6 A. The template is, yes.  
 7 Q. So whether it's sent by you or  
 8 Emily Forte or somebody else in your office,  
 9 they use the same template?  
 10 A. Yes.  
 11 Q. Is there anyplace in the  
 12 template to put in the information about the  
 13 specific provisions of the SMP that have been  
 14 violated or alleged to have been violated?  
 15 A. We don't do that. I mean --  
 16 Q. Why?  
 17 A. Because we are providing notice  
 18 that conduct is implicating the specific code,  
 19 being the sexual misconduct policy, our  
 20 expectation is that once the investigation  
 21 begins the investigator is sharing more  
 22 specific conduct for a response.  
 23 Q. The sexual misconduct policy  
 24 includes sexual assault, correct?

279

1 A. We don't see that as our role  
 2 within the process. We don't want to  
 3 compromise the investigation by sharing more  
 4 information. We leave that to the  
 5 investigator to provide that notice.  
 6 Q. When does the investigator  
 7 provide that notice?  
 8 A. It's our expectation, when the  
 9 adviser, when he or she is meeting with the  
 10 students, that that notice takes place.  
 11 Q. Now, Ms. Forte identified that  
 12 meeting as a hearing.  
 13 A. Yes.  
 14 Q. So it's your understanding that  
 15 the specific provision of the sexual  
 16 misconduct policy that's being violated, that  
 17 information is provided to the respondent at  
 18 the time of the hearing?  
 19 A. The investigation is the  
 20 hearing, but it's also pretty fluid, where the  
 21 student has the opportunity to share  
 22 additional information, follow-up, come back.  
 23 And so there's notice, but it's not the only  
 24 time that the student has the opportunity or

278

1 A. Yes.  
 2 Q. It includes -- do you know the  
 3 four categories off the top of your head?  
 4 There's four broad categories that fall within  
 5 the SMP, correct?  
 6 A. Well, if you're looking at the  
 7 title, yes, sexual assault, sexual harassment,  
 8 sexual exploitation, domestic violence, dating  
 9 violence, or stalking.  
 10 Q. So I guess that -- now, do each  
 11 of those categories have their own definition  
 12 sections, sexual assault?  
 13 A. Yes.  
 14 Q. And sexual harassment as well,  
 15 correct?  
 16 A. Yes.  
 17 Q. I heard your answer. I am  
 18 going to go back to it and I don't like to  
 19 repeat my own questions, but I just want to  
 20 see if I can clarify it a little bit. Is  
 21 there any reason why when the notice is sent  
 22 out to the student, process notice, that your  
 23 office doesn't tell them which of the five  
 24 policies this is falling under?

280

1 is expected to respond to the information, is  
 2 that moment. Where in a hearing it's more,  
 3 "Here's your hearing. Here's your time.  
 4 Hearing concludes." Where the investigation  
 5 is more kind of continuations of hearings.  
 6 Q. All right. Have you reviewed  
 7 Ms. Malloy's findings?  
 8 A. Yes.  
 9 Q. Can you tell me where in her  
 10 findings she indicates that she informed the  
 11 respondent that the violation was under the  
 12 category of sexual assault?  
 13 A. I can't. I don't have it  
 14 committed to memory. I've read the report,  
 15 but I can't speak to it.  
 16 Q. Do you believe it's in there?  
 17 A. I can't speak to that.  
 18 Q. Would it be your expectation  
 19 that she would inform the respondent that the  
 20 specific category he's accused of being  
 21 violated is sexual assault?  
 22 A. It would be my expectation that  
 23 the investigator share the conduct for  
 24 response through the investigation process,

281

1 what the complaint is, sharing the complaint,  
 2 and have the student have an opportunity to  
 3 respond to the complaint and share  
 4 information.  
 5 Q. What about the complaint is  
 6 your expectation that the investigator will  
 7 share?  
 8 A. The complaint, the specifics  
 9 that he or she, as the investigator, feels is  
 10 important for the student to respond to. We  
 11 don't micromanage the investigation. We have  
 12 no reason to doubt or suspect that they are  
 13 not providing students an opportunity to  
 14 respond to the complaint. We don't share that  
 15 initially.  
 16 Q. You have no reason to think  
 17 that?  
 18 A. I have no reason to think that.  
 19 Q. So in other cases has the  
 20 investigator shared the specific allegations  
 21 with -- that you're aware of -- with the  
 22 respondent as a matter of course?  
 23 A. Again, without looking at the  
 24 specific investigative reports -- I don't have

282

1 these committed to memory. I read them. We  
 2 conclude a matter. These are -- they're  
 3 longer documents. We have a number of them I  
 4 produced for the weekend. I don't have them,  
 5 so I can't answer with any certainty whether  
 6 she has or she hasn't.  
 7 Q. All right. So in this case the  
 8 sexual misconduct policy is what, about 60  
 9 pages, give or take?  
 10 A. Give or take. I would say  
 11 take. I think it's about 52, 50.  
 12 Q. And in those 52 pages is the  
 13 definitions on explanation of the five  
 14 categories listed here in this letter,  
 15 correct?  
 16 A. Within the policy, correct,  
 17 yes.  
 18 Q. And that information is shared  
 19 with the respondent not before the meeting  
 20 with the investigator, the specifics, correct?  
 21 A. The specifics of the complaint,  
 22 no. We leave that to the investigator to  
 23 share the specifics of the complaint.  
 24 Q. At the time of the first

283

1 meeting?  
 2 A. During the investigation.  
 3 Q. No. Is it your expectation or  
 4 policy that the investigator provide it in  
 5 advance of the first meeting with the  
 6 respondent?  
 7 MR. PICCERILLI: Can I hear  
 8 that question back, please?  
 9 ---  
 10 (Whereupon, the court reporter  
 11 read back from the record.)  
 12 ---  
 13 BY MR. MIRABELLA:  
 14 Q. What was the answer, then?  
 15 A. Can you read back the answer?  
 16 Q. Sure. How about I just  
 17 rephrase the question so we can move on?  
 18 Is there any expectation in the  
 19 Community Standards office that the  
 20 investigator is expected to provide the  
 21 specific violation section of the sexual  
 22 misconduct code in advance of the first  
 23 meeting?  
 24 A. It's our expectation that it's

284

1 covered over the course of the investigation.  
 2 We don't say at the start, "You do this, next  
 3 you do this, next you do this" for the  
 4 investigator. They are the trained  
 5 investigator, so we do -- they know our policy  
 6 they know the process, and we have the  
 7 expectation -- I have the expectation that  
 8 they are providing adequate notice and I have  
 9 no reason to suspect or think that they are  
 10 not.  
 11 Q. Well, in this case do you  
 12 believe they provided adequate notice to John  
 13 Doe?  
 14 A. I believe notice was provided  
 15 for his response.  
 16 Q. No. I said, do you believe  
 17 adequate notice was provided to John Doe?  
 18 MR. PICCERILLI: Objection to  
 19 form.  
 20 THE WITNESS: Yes.  
 21 BY MR. MIRABELLA:  
 22 Q. What notice was provided to  
 23 John Doe in advance of the meeting with the  
 24 investigator?

285

1 A. We provided notice that there  
2 is conduct that implicates the policy and then  
3 Ms. Malloy would have to answer about her  
4 notice. Again, my expectation and my  
5 understanding -- and I have no reason to doubt  
6 that -- is that over the course of the  
7 investigation there was information shared  
8 with both parties for their response.

9 Q. Not over the course of the  
10 investigation. At any time -- is it your  
11 understanding that at any time prior to her  
12 interview with Mr. Doe or during her interview  
13 with Mr. Doe she provided to him the specific  
14 factual allegations that Mrs. Roe asserted  
15 against him?

16 MR. PICCERILLI: Objection.

17 THE WITNESS: Without the  
18 investigative report in front of me --  
19 I don't have it committed to memory.  
20 So the investigative report would  
21 outline what Liz did as the  
22 investigator.

23 BY MR. MIRABELLA:

24 Q. Here is SJU0331. It's your

286

1 checklist. This way you can identify for me  
2 which document or documents you believe you  
3 would need to answer the question.

4 A. Documents 6 and 7 on here,  
5 Pages 13 and 23, it's a summary of the  
6 investigation prepared by the investigator and  
7 summary of findings of fact, determinations of  
8 credibility, rationale and outcome prepared by  
9 the investigator.

10 Q. Document 6 and 7?

11 A. Document 6 and 7. Do you want  
12 me to repeat? Document 6 is summary of  
13 investigation prepared by investigator and  
14 Document 7 is summary of findings of fact,  
15 determinations of credibility, rationale and  
16 outcome prepared by investigator.

17 Q. So what pages are those?

18 A. Thirteen and 23.

19 Q. So I'm going to hand you what's  
20 been Bates labeled previously SJU334  
21 sequentially through 360. If need be, we'll  
22 make a copy and have it marked as an exhibit.  
23 And, first, just to confirm if you believe  
24 this is 6 and 7 as you understand it.

287

1 A. That was the back end. That's  
2 not part of 7.

3 Q. So the question was: You were  
4 the sanctioning officer in this case, correct?

5 A. Correct.

6 Q. All right. And so you reviewed  
7 the investigative findings, correct?

8 A. I did.

9 Q. Did you ever discuss the  
10 investigation with Ms. Malloy?

11 A. Can you -- with?

12 Q. Ms. Malloy?

13 A. Oh. Sorry. I didn't hear at  
14 the end. No.

15 Q. So my question to you is: Did  
16 Ms. Malloy, to your knowledge, ever inform  
17 Mr. Doe of the specific section of the sexual  
18 misconduct policy under which he was accused?

19 MR. PICCERILLI: Objection to  
20 form.

21 MR. MIRABELLA: I would be  
22 happy to try to correct that, Al.

23 MR. PICCERILLI: Well, the  
24 point is, I think he can read the

288

1 report, but I think it's a question  
2 for Ms. Malloy to answer as opposed to  
3 this particular witness.

4 MR. MIRABELLA: This particular  
5 witness was the sanctioning officer  
6 and he's already testified about his  
7 expectations of what the investigator  
8 does and should do. I think it's an  
9 appropriate question.

10 THE WITNESS: Right. Well, I  
11 think it's appropriate for me to read  
12 the 28 pages, because I have not read  
13 this in some time and so for me to try  
14 to pull a sentence out that speaks to  
15 it, I think it would be hard.

16 MR. MIRABELLA: All right. I  
17 think that's perfectly reasonable.  
18 We'll go off the video and you can  
19 read through it.

20 THE VIDEOGRAPHER: Off the  
21 record, 9:39.

22 -- --  
23 (Off the record)  
24 -- --

1 THE VIDEOGRAPHER: We are on  
 2 the record, 9:48.  
 3 BY MR. MIRABELLA:  
 4 Q. Mr. Bordak, can you answer the  
 5 question?  
 6 A. Can I have that repeated,  
 7 please?  
 8 MR. PICCERILLI: Also, before  
 9 you do that, I don't know if you put  
 10 it on the record already, you may  
 11 have, the Bates stamp numbers?  
 12 MR. MIRABELLA: Sure. I think  
 13 I did, but we can do it again.  
 14 BY MR. MIRABELLA:  
 15 Q. Mr. Bordak, just indicate what  
 16 documents you have in front of you based on  
 17 the number. It's sequential, so the first one  
 18 and the last one.  
 19 A. It's 344 through 359.  
 20 Q. And that's SJU?  
 21 A. SJU.  
 22 ---  
 23 (Whereupon, the court reporter  
 24 read back from the record the pending

1 question asked prior to going off the  
 2 record at 9:39 a.m.)  
 3 ---  
 4 THE WITNESS: According to the  
 5 investigative report -- so it's not  
 6 included in the investigative report,  
 7 so I can't speak to what Ms. Malloy  
 8 might have done or not done that's not  
 9 represented in the report.  
 10 BY MR. MIRABELLA:  
 11 Q. All right. Let's turn our  
 12 attention to a different topic for a few  
 13 minutes. Oh, the charge letter, which we've  
 14 started off the discussion that led us into  
 15 the investigative report --  
 16 MR. PICCERILLI: That's  
 17 Bordak-4?  
 18 MR. MIRABELLA: Yes.  
 19 BY MR. MIRABELLA:  
 20 Q. Charge letter -- it's really  
 21 the Notice of Process Letter. Has that letter  
 22 changed from March 1, 2018 until the present,  
 23 the template?  
 24 A. I do not know.

1 Q. Do you recall making any  
 2 changes to it?  
 3 A. I recall making changes to the  
 4 templates. We have many templates and I  
 5 recall making changes to templates as we move  
 6 through the semester. I don't know whether  
 7 there's been changes to the template since  
 8 this matter.  
 9 Q. Template for the Notice of  
 10 Process Letter?  
 11 A. Right.  
 12 Q. Do you know -- how hard is it  
 13 for you to determine that? I don't mean right  
 14 here. I mean at your office.  
 15 A. Sure. I could see what --  
 16 MR. PICCERILLI: I'm sorry.  
 17 THE WITNESS: I could determine  
 18 whether there has been updates since.  
 19 MR. MIRABELLA: Just a request  
 20 on the record for the template of the  
 21 current Notice of Process Letter, if  
 22 there have been any changes, or a  
 23 confirmation that the template hasn't  
 24 changed.

1 BY MR. MIRABELLA:  
 2 Q. All right. So the  
 3 pre-investigation meeting, I wanted to talk to  
 4 you about that for a little bit. I know this  
 5 was covered. I was present and I had reviewed  
 6 your testimony. I don't intend and don't want  
 7 to cover the questions that were already asked  
 8 and answered and I apologize if there is a  
 9 little bit of overlap. The pre-investigation  
 10 meeting also has a document called the  
 11 "Pre-investigation Meeting Checklist,"  
 12 correct?  
 13 A. Yes.  
 14 Q. That document, is that document  
 15 also a template?  
 16 A. Yes.  
 17 Q. All right. Has that template  
 18 changed since this incident occurred?  
 19 A. I can't recall. Same answer.  
 20 Q. Could you check and advise  
 21 counsel as well?  
 22 A. Yes.  
 23 Q. Before the interim sexual  
 24 misconduct policy came into effect, was there

293

294

1 any formal process for pre-investigation  
 2 meetings of complaints involving sexual  
 3 misconduct?  
 4 A. Yes.  
 5 Q. All right. And can you  
 6 describe, was there a checklist utilized?  
 7 A. Yes.  
 8 Q. And was there a Notice of  
 9 Process Letter sent out?  
 10 A. Yes.  
 11 Q. All right. Did the Notice of  
 12 Process Letter have any information additional  
 13 to the information that's contained that we  
 14 just went through in this Notice of Process  
 15 Letter?  
 16 A. That would be already answered.  
 17 It's different information. It's a procedural  
 18 checklist and so the pre-investigation meeting  
 19 checklist pulls language from the sexual  
 20 misconduct policy. With that not in place,  
 21 the checklist then would have pulled from the  
 22 processes outlined in the student handbook.  
 23 So it's different.  
 24 Q. Were the specific provisions of

1 the sexual misconduct or the student handbook  
 2 alleged to have been violated set forth in the  
 3 Notice of Process Letter?  
 4 A. Yes.  
 5 Q. Were any of the factual  
 6 allegations, the specific factual allegations  
 7 against the respondent set forth or contained  
 8 in the Notice of Process Letter?  
 9 A. No.  
 10 Q. Was that information provided  
 11 to the respondent prior to an administrative  
 12 hearing?  
 13 A. Not in specific terms.  
 14 Q. What about in general terms?  
 15 A. We would share with a student  
 16 that they have alleged to have violated the  
 17 alcohol policy, but not all of the different  
 18 ways that they were alleged, or that a student  
 19 that was alleged to have violated the drug  
 20 policy, but not all of the ways. And similar  
 21 in sexual misconduct, we would tell the  
 22 students that they were alleged to be in  
 23 violation of violating — a sexual offense, I  
 24 believe it was called at that time, but not

295

296

1 the specific conduct.  
 2 Q. Was the respondent entitled to  
 3 see the incident report or any of the  
 4 documentation prior to the administrative  
 5 hearing?  
 6 A. Yes.  
 7 Q. And how did that -- was that  
 8 set forth in the student handbook or was  
 9 that -- how was that memorialized, that  
 10 process or procedure?  
 11 A. I don't believe it was in the  
 12 student handbook.  
 13 Q. All right. Then how did the  
 14 people in Community Standards know that that,  
 15 in fact, was the policy? Do you follow me?  
 16 MR. PICCERILLI: I don't.  
 17 Objection to form.  
 18 BY MR. MIRABELLA:  
 19 Q. All right. Under the old  
 20 system the respondent was entitled to see the  
 21 evidence prior to the administrative hearing,  
 22 correct?  
 23 A. Correct.  
 24 Q. All right. And was that

1 communicated to the respondent?  
 2 A. Yes.  
 3 Q. And when was that communicated  
 4 to the respondent?  
 5 A. If they came in for what we  
 6 called a prehearing meeting they were told at  
 7 that time or if students asked we would  
 8 answer, but we didn't necessarily tell the  
 9 students.  
 10 Q. All right. But if they asked  
 11 or it came up they would be notified, for  
 12 example, the way you give at a prehearing  
 13 meeting?  
 14 A. Yes.  
 15 Q. Now, after the implementation  
 16 of the SMP that policy changed?  
 17 A. Well, right, the policy that  
 18 became the sexual misconduct policy.  
 19 Q. I'm sorry. No. For the --  
 20 whether the respondent was entitled to see the  
 21 investigative file prior to the either  
 22 interview with the investigator or  
 23 investigator hearing changed from prior to the  
 24 policy, correct?



1 A. Yes.  
 2 Q. All right. Why?  
 3 A. I can't answer that.  
 4 Q. Who changed it?  
 5 A. I wasn't part of the policy  
 6 development.  
 7 Q. How was it memorialized?  
 8 A. I don't know what you mean by  
 9 "memorialized."  
 10 Q. How did you know it changed?  
 11 A. The sexual misconduct policy  
 12 had a policy prescribed through and we're,  
 13 like -- I mean, as I recall -- we are talking  
 14 a few years now -- we were educated on the  
 15 process and the process would be that the  
 16 investigator would [sic] share the specific  
 17 conduct so as to not compromise the  
 18 investigation.  
 19 Q. Is that written down anywhere?  
 20 A. Not to my knowledge.  
 21 Q. And so how did you learn of it  
 22 for the first time?  
 23 A. We had meetings to  
 24 operationalize that when the interim sexual

1 misconduct policy took effect. It wasn't an  
 2 arbitrary decision of mine to just not share  
 3 documents. That was part of our meetings to  
 4 operationalize the interim sexual misconduct  
 5 policy at that time.  
 6 Q. Who do you recall informing you  
 7 of that change?  
 8 A. I don't recall specifically.  
 9 Q. Who -- if not specifically,  
 10 what level of SJU administrative personnel  
 11 would have been involved in that kind of a  
 12 change?  
 13 A. The Title IX coordinator, my  
 14 supervisor, I am sure general counsel was part  
 15 of conversations.  
 16 Q. And your understanding was that  
 17 that decision was made so as to not compromise  
 18 the investigation?  
 19 A. In part, yes.  
 20 Q. Any other part?  
 21 A. Because we were not the  
 22 investigators holding the pre-investigative --  
 23 the administrator having the pre-investigation  
 24 meeting was not the investigator. To share

1 information with those students in that moment  
 2 takes away from the intention of that meeting  
 3 being processed. Once we start sharing  
 4 specific information the students then want to  
 5 respond and that then puts that administrator  
 6 who is doing the pre-investigation meeting as  
 7 a potential witness in the matter that they  
 8 have been shared information. We treat those  
 9 conversations as purely process and let the  
 10 investigator handle the complaint, the  
 11 allegations, the responses, the conversations  
 12 with the students about what happened. Ours  
 13 is a purely process conversation.  
 14 Q. As part of the process  
 15 conversation why couldn't the students be told  
 16 that they are entitled to see the  
 17 investigative file if they schedule an  
 18 appointment in advance of their meeting with  
 19 the investigator?  
 20 A. They are not told. I am not  
 21 going to answer why they shouldn't be.  
 22 They're not.  
 23 Q. Do you know --  
 24 A. That's our process. That's our

1 policy. That was determined -- that was not  
 2 determined by me. I am in full support of  
 3 that. I think it's in compliance for what we  
 4 need to do for our policy and for our  
 5 students, but I can't speak to --  
 6 Q. That's not the policy and  
 7 that's not an area that you -- you don't get  
 8 to dictate policy; is that correct?  
 9 A. Not for the sexual misconduct  
 10 policy, correct.  
 11 Q. Who does?  
 12 A. There is a writing group that  
 13 involved faculty staff, administration,  
 14 probably starting in the fall of 2014, for  
 15 implementation of the interim sexual  
 16 misconduct policy in the spring of '15.  
 17 Q. Was Carey Anderson part of the  
 18 writing group?  
 19 A. I don't recall.  
 20 Q. Dr. Forte -- Dr. Perry, I  
 21 believe, identified a professor, but I don't  
 22 recall the name right off the top of my head.  
 23 The individuals that comprised that writing  
 24 group, that list exists somewhere?

301

1 A. I would assume so. I don't  
 2 have access. I don't know who was on that  
 3 writing group.  
 4 Q. So when the new policy came  
 5 into place, the interim policy and then the  
 6 sexual misconduct policy, there were meetings  
 7 about it, how to implement it, correct?  
 8 A. Sure. Yes.  
 9 Q. And at some point did you  
 10 become responsible for training others in your  
 11 office as to how to implement it?  
 12 A. Yes.  
 13 Q. Are there any other specific  
 14 policies such as the one we were talking about  
 15 earlier, access to the investigation  
 16 materials, that you learned about and that you  
 17 had to train people in your office about that  
 18 aren't memorialized elsewhere?  
 19 MR. PICCERILLI: Can I hear  
 20 that back, please? It was a little  
 21 bit long.  
 22 ---  
 23 (Whereupon, the court reporter  
 24 read back from the record.)

303

1 evidence prior to a hearing or an  
 2 investigative interview, correct?  
 3 A. Yes.  
 4 Q. And were there other changes to  
 5 the manner in which the investigation was  
 6 undertaken that you learned about that you had  
 7 to teach your staff members?  
 8 A. Yeah. I would say all pieces  
 9 of the policy. Right. I mean, we were  
 10 implementing an investigative model which was  
 11 new and so who the investigators would be, you  
 12 know, what that -- those pre-investigation  
 13 meetings, kind of all of those pieces along  
 14 the process, we would -- I would be  
 15 responsible for ensuring that the folks  
 16 involved in that process would know it.  
 17 Q. The manual -- is there anything  
 18 in your office that you utilize when you train  
 19 new assistants about the SMP and the  
 20 investigative process?  
 21 A. We have the policy itself, I  
 22 mean, that's the foundational document for the  
 23 training, the checklist, the notices, and we  
 24 have a flow chart that's really, maybe, a

302

1 ---  
 2 MR. PICCERILLI: Objection to  
 3 form.  
 4 THE WITNESS: There is policy  
 5 and there is practice and so we don't  
 6 have in writing all of our practice,  
 7 but our practice is in line with what  
 8 we are required to do by policy.  
 9 BY MR. MIRABELLA:  
 10 Q. Okay.  
 11 A. So --  
 12 Q. Let me rephrase the question.  
 13 All right. Any ones that involve with respect  
 14 to sexual misconduct investigations?  
 15 MR. PICCERILLI: Objection to  
 16 the form.  
 17 THE WITNESS: I still don't  
 18 understand what you're asking.  
 19 BY MR. MIRABELLA:  
 20 Q. Let me try -- it's not the best  
 21 of my questions. During the meetings about  
 22 the new policy of sexual misconduct you  
 23 learned what the school's position was with  
 24 respect to the disclosure of investigation

304

1 four- or five-box flow chart that does a step  
 2 by step about the process.  
 3 Q. Do you have any internal  
 4 manuals that you use or refer to?  
 5 A. Not for the sexual misconduct  
 6 policy.  
 7 Q. Do you have any external  
 8 publications that you utilize or refer to in  
 9 connection with the sexual misconduct policy?  
 10 MR. PICCERILLI: Objection to  
 11 form.  
 12 THE WITNESS: Not for the  
 13 sexual misconduct policy.  
 14 BY MR. MIRABELLA:  
 15 Q. I want to ask you some  
 16 questions about the pre-investigative meeting  
 17 checklist.  
 18 A. Okay.  
 19 Q. As you mentioned, you might --  
 20 strike that. Have you ever changed it?  
 21 A. Yes.  
 22 Q. All right. Is anyone besides  
 23 you responsible for the content of the  
 24 pre-investigative meeting checklist at this

305

1 time?  
 2 A. No.  
 3 Q. Has anyone besides you been  
 4 responsible for any changes to it?  
 5 A. No.  
 6 Q. The initial checklist, did you  
 7 draft that or was that something provided to  
 8 you?  
 9 A. I drafted that.  
 10 Q. And I think you answered as to  
 11 the notice letter, but maybe you did to the  
 12 checklist too. Have there been any changes to  
 13 it over the years?  
 14 A. Yes, there has been changes. I  
 15 don't know when those changes have occurred.  
 16 Q. Off the top of your head?  
 17 A. Right.  
 18 Q. Has there been more than one  
 19 change?  
 20 A. Yes.  
 21 Q. If you decide as director of  
 22 Community Standards to change that checklist  
 23 do you have to have interdepartmental review  
 24 or interschool review of your changes?

307

1 of identification.)  
 2 ---  
 3 BY MR. MIRABELLA:  
 4 Q. Mr. Bordak, why don't you take  
 5 a moment to look at both documents. I am  
 6 going to retrieve, unless you need them, those  
 7 records. Thank you. Have you had a chance to  
 8 look at it?  
 9 MS. SCHIMELFENIG: Is there a  
 10 question pending?  
 11 MR. MIRABELLA: Has he had a  
 12 chance to look at the document?  
 13 MS. SCHIMELFENIG: I'm asking  
 14 because I need to take a break. Is  
 15 there a question pending?  
 16 MR. MIRABELLA: We are not  
 17 breaking now. You can step out if you  
 18 need to, but we are really tight on  
 19 time.  
 20 MS. SCHIMELFENIG: I need to  
 21 talk to --  
 22 MR. MIRABELLA: This is not  
 23 going into my time.  
 24 MS. SCHIMELFENIG: I need to

306

1 A. No.  
 2 Q. And do you keep copies of the  
 3 old checklist for reference so that you can  
 4 sort of continue to see how the document  
 5 evolves?  
 6 A. It's my intention to do that.  
 7 To be honest, there may have been times where  
 8 a change has been made and I haven't or have  
 9 forgotten to memorialize a previous version,  
 10 but it's our intention to have previous  
 11 copies.  
 12 Q. Did you change the checklist  
 13 after the Powell complaint was filed?  
 14 MR. PICCERILLI: Asked and  
 15 answered.  
 16 THE WITNESS: I can't recall.  
 17 BY MR. MIRABELLA:  
 18 Q. Oh. Was that the answer? All  
 19 right.  
 20 MR. MIRABELLA: So 5 and 6 is  
 21 what we are going to mark next.  
 22 ---  
 23 (Whereupon, Exhibits Bordak-5  
 24 and Bordak-6 were marked for purposes

308

1 talk to my outside counsel. Entirely  
 2 appropriate. Thank you.  
 3 MR. MIRABELLA: It's not  
 4 inappropriate, but I get the time  
 5 back.  
 6 THE VIDEOGRAPHER: Off the  
 7 record, 10:06.  
 8 ---  
 9 (Off the record)  
 10 ---  
 11 MR. PICCERILLI: We are back.  
 12 THE VIDEOGRAPHER: On the  
 13 record, 10:07.  
 14 BY MR. MIRABELLA:  
 15 Q. Mr. Bordak, have you had a  
 16 chance to look at 5 and 6?  
 17 A. Yes.  
 18 Q. All right. Just identify for  
 19 the record what each document is.  
 20 A. Document 5 is the  
 21 pre-investigation meeting checklist completed  
 22 by Doe and an email sent by Emily Forte to Doe  
 23 attaching an electronic copy of the completed  
 24 document. And Number 6 is a pre-investigation

309

1 meeting document for a previous matter under  
 2 the interim sexual misconduct policy.  
 3 Q. Comparing the documents, first  
 4 off, one is a checklist for the interim policy  
 5 and one is the checklist for the subsequent  
 6 sexual misconduct policy, correct?  
 7 A. Yes.  
 8 Q. All right. So not all the  
 9 paragraphs line up in terms of the checklist.  
 10 You would agree with me that there were  
 11 changes to the checklist made after the matter  
 12 dated March 16 of 2015, correct?  
 13 A. Yes.  
 14 MR. PICCERILLI: That is the  
 15 date of the signatures on --  
 16 MR. MIRABELLA: Yes.  
 17 MR. PICCERILLI: -- Bordak-6?  
 18 Okay.  
 19 BY MR. MIRABELLA:  
 20 Q. I want to direct your attention  
 21 to the Paragraph 11 on Exhibit-6. Do you see  
 22 that?  
 23 A. Yes.  
 24 Q. All right. And does that

310

1 roughly correspond to Paragraph 13 on the John  
 2 Doe checklist?  
 3 A. Roughly. I mean, there's a lot  
 4 more within Paragraph 11 on Document 6 that it  
 5 looks like was made into separate items within  
 6 Document 5.  
 7 Q. All right. Is there  
 8 anything --  
 9 MR. PICCERILLI: Hold on a  
 10 second. I think Document -- Item  
 11 Number 13 goes onto the next page.  
 12 THE WITNESS: You're right.  
 13 BY MR. MIRABELLA:  
 14 Q. So back to Exhibit-5, Paragraph  
 15 11, second page. Do you see the first  
 16 paragraph -- I'm sorry -- the second  
 17 paragraph, "If during the course of the  
 18 investigation"?  
 19 A. Yes.  
 20 Q. Was that paragraph added after  
 21 the Powell complaint was filed?  
 22 A. I'm sorry. Can you repeat that  
 23 question?  
 24 Q. Sure. So these were two

311

1 checklists?  
 2 A. Yes.  
 3 Q. On Exhibit-5, the one used in  
 4 the Doe case, on Page 3 of 4, the second  
 5 paragraph, do you see that?  
 6 A. "If during the course"?  
 7 Q. Right. Is there anything like  
 8 that set forth in either Paragraph 11 of  
 9 Exhibit-6 or anywhere else in Exhibit-6 or was  
 10 that added, if you know, after the Powell  
 11 complaint?  
 12 A. I don't know if it was added  
 13 after the Powell complaint or after the  
 14 institution of the sexual misconduct policy.  
 15 Q. Is there anything in --  
 16 A. The interim sexual misconduct  
 17 policy.  
 18 Q. Got it. But you might be able  
 19 to confirm or verify that by reference to  
 20 earlier checklists?  
 21 A. Perhaps, yes.  
 22 Q. All right. Do you recall  
 23 making -- now having these two documents in  
 24 front of you, the Powell checklist, the Doe

312

1 checklist -- making any changes to the  
 2 checklist after Powell?  
 3 A. Again, I don't know whether it  
 4 was after Powell or after the implementation  
 5 of the sexual misconduct policy and not the  
 6 interim sexual misconduct policy. Much of  
 7 this language changed, but it was policy  
 8 language that directed the checklist.  
 9 Q. When you say, "much of this  
 10 language changed" you are pointing to a  
 11 document. Which one do you mean?  
 12 A. So from Document 6 to Document  
 13 5 there were changes, but much of that is  
 14 represented in policy language changes. We  
 15 went from an interim sexual misconduct policy  
 16 to a sexual misconduct policy and so I don't  
 17 know whether the changes are directly related  
 18 to that or a specific matter.  
 19 Q. Just so I understand your  
 20 answer, if, for example, the second paragraph  
 21 of Page 3, Exhibit-5, if that, in fact, is  
 22 also something that was added to the sexual  
 23 misconduct policy that was not part of the  
 24 interim sexual misconduct policy, that change

313

1 might have been done in relationship to the  
 2 policy change, correct?  
 3 A. Yes.  
 4 Q. And you don't know when that  
 5 change took place and if it was policy driven  
 6 or not at the moment, correct?  
 7 A. Yes.  
 8 Q. All right. For the moment, I  
 9 think I am finished with 5 and 6.  
 10  
 11 (Whereupon, Exhibit Bordak-7  
 12 was marked for purposes of  
 13 identification.)  
 14  
 15 BY MR. MIRABELLA:  
 16 Q. Mr. Bordak, what's been marked  
 17 as Exhibit-7 is some documentation from the  
 18 appeal packet and it includes, I believe, more  
 19 than one person's response to the Doe appeal  
 20 in this matter. I am primarily going to ask  
 21 you questions about your response. It was  
 22 just easier to copy it this way. You're, of  
 23 course, free to refer to whatever you want to  
 24 refer to as I ask you some questions. Do you

314

1 want to read your appeal response before we  
 2 get into the questions and answers? I think  
 3 it's a page or page and a half.  
 4 A. Yes, if you don't mind, just a  
 5 moment.  
 6 Q. No. Absolutely.  
 7 MR. MIRABELLA: Off the video,  
 8 please.  
 9 THE VIDEOGRAPHER: Off the  
 10 record, 10:14.  
 11 MR. PICCERILLI: While we are  
 12 off the video, I just want to make  
 13 sure you're going to attach whatever  
 14 is marked as an exhibit to the  
 15 transcript.  
 16 MR. MIRABELLA: I certainly  
 17 hope so.  
 18 THE VIDEOGRAPHER: We are on  
 19 the record, 10:17.  
 20 BY MR. MIRABELLA:  
 21 Q. Mr. Bordak, off the record, do  
 22 you have in front of you -- what's the exhibit  
 23 number we are up to, 7?  
 24 A. Seven.

315

1 Q. Did you have an opportunity to  
 2 review your appeal response dated April 26,  
 3 2018?  
 4 A. Yes.  
 5 Q. All right. And how many --  
 6 it's two pages in length or --  
 7 A. Three.  
 8 Q. Three pages, I guess, correct?  
 9 A. Yes, three.  
 10 MR. PICCERILLI: Can you ask  
 11 the witness to state which SJU  
 12 numbers?  
 13 MR. MIRABELLA: This is going  
 14 to attached, but sure. It's SJU584,  
 15 85 and 86, correct?  
 16 THE WITNESS: Yes.  
 17 MR. PICCERILLI: Thank you.  
 18 BY MR. MIRABELLA:  
 19 Q. First, as a general matter,  
 20 what is this document and its use?  
 21 A. It is, as titled, the  
 22 Sanctioning Officer Appeal Response. When an  
 23 appeal request is submitted that is sent to  
 24 the sanctioning officer and the investigator

316

1 for response to the pieces raised in appeal.  
 2 Q. The Community Standards office ,  
 3 are they always the sanctioning officer in  
 4 cases of sexual misconduct?  
 5 A. They -- so we work with  
 6 professional staff members in residence life  
 7 that are also trained, but in that moment they  
 8 are acting as agents of Community Standards.  
 9 So it's a correct statement, that Community  
 10 Standards, but it's more than just me and  
 11 Emily.  
 12 Q. How many other individuals?  
 13 A. At that time, one.  
 14 Q. And does the sanctioning  
 15 officer always do a reply to an appeal in a  
 16 situation where there was a finding of  
 17 responsibility?  
 18 A. The sanctioning officer would  
 19 respond if asked by the vice president of  
 20 student life's office to respond. So I  
 21 received as a sanctioning officer a copy of  
 22 the appeal request and complainant's response  
 23 to the appeal request for my response as a  
 24 sanctioning officer. I didn't take it on



317

318

1 myself to respond. I was prompted a response  
 2 through the appeal process by Kiersten White,  
 3 who was moderating the appeal process.  
 4 Q. All right. And -- understood.  
 5 Who moderates -- what individual, what offices  
 6 share the responsibility for being an appeal  
 7 moderator?  
 8 A. It's Dr. White and -- well,  
 9 it's Dr. White and in her absence another  
 10 associate -- assistant vice president, Dr.  
 11 John Jeffery, serve as moderators of the  
 12 board.  
 13 Q. And what department or what --  
 14 Dr. White is someone you report to, correct?  
 15 A. Yes.  
 16 Q. And what is her title?  
 17 A. Assistant vice president for  
 18 student life.  
 19 Q. All right. And she reports to  
 20 Carey Anderson?  
 21 A. Correct.  
 22 Q. And what's his title?  
 23 A. Vice president for student  
 24 life.

1 Q. And additional titles, but  
 2 okay. So you said you were prompted for a  
 3 response. Is it an invitation, a request, or  
 4 are you expected to respond to the appeal as  
 5 the sanctioning officer when so notified? And  
 6 I will object to my own question. Can you  
 7 tell me how -- do you have a choice?  
 8 MR. PICCERILLI: Let me object  
 9 to his question too.  
 10 MR. MIRABELLA: I am objecting  
 11 to my own question.  
 12 THE WITNESS: I do. There have  
 13 been times when -- there are times,  
 14 scenarios where a sanctioning officer  
 15 could say, "I have no response."  
 16 BY MR. MIRABELLA:  
 17 Q. Back to the better and simpler  
 18 part of the question. Do you ever respond  
 19 when not prompted or requested?  
 20 A. No.  
 21 Q. And the prompt or request has  
 22 to come from the person serving as the  
 23 moderator?  
 24 A. Yes.

319

320

1 Q. Is there any policy provision  
 2 in the SMP that provides for responses to  
 3 appeals from the sanctioning officer?  
 4 A. No.  
 5 Q. Is there any policy or  
 6 provision in the SMP to notify the respondent  
 7 that others at the school may be in the  
 8 position to file responses to his appeal  
 9 beside the complainant?  
 10 A. Not as written in the policy.  
 11 It does speak about additional documentation,  
 12 but not explicitly.  
 13 Q. Are they -- as a matter of  
 14 policy are the respondents told that others  
 15 may be responding to the appeal?  
 16 A. If the respondent participates  
 17 in a meeting or requests to learn more about  
 18 the appeals process we would share all of  
 19 those particulars, but we don't share all of  
 20 the particulars about the appeals process  
 21 because many students might not be interested  
 22 in knowing about the appeals process.  
 23 Q. The document -- the SMP  
 24 provisions about the appeal are set forth very

1 explicitly in the SMP, correct, about the  
 2 process for the respondent and the complainant  
 3 and the time period?  
 4 A. Yes.  
 5 Q. Who else is -- may be requested  
 6 by the moderator, if not by name by title or  
 7 role, to respond to the appeal?  
 8 A. The sanctioning officer and the  
 9 investigator. Because this response is not a  
 10 support of an outcome, it's a response to  
 11 things raised through the appeal, and so the  
 12 only person that could answer a question about  
 13 X is the sanctioning officer. So it makes  
 14 sense and is our process to ask the  
 15 sanctioning officer to respond to X and that's  
 16 what this document is. There is questions  
 17 about and assertions that the Office of  
 18 Community Standards did X, so I was asked to  
 19 respond to those pieces about what was  
 20 purported that the Office of Community  
 21 Standards did. So this isn't an advocacy of  
 22 an outcome but a response to items raised in  
 23 an appeal.  
 24 Q. Since the sexual misconduct or

321

1 interim sexual misconduct policy has been in  
 2 place has any appeal resulted in a finding of  
 3 non-responsibility?  
 4 A. I don't know the specifics of  
 5 all the appeals.  
 6 Q. Has any appeal, to your  
 7 knowledge, ever reversed a finding?  
 8 A. I can't get -- I don't know  
 9 specifics. I mean, truly, I have been doing  
 10 this over a decade, I don't know.  
 11 Q. But the SMP policy in the  
 12 StarRez system show, you know, roughly 40  
 13 cases involving sexual misconduct. Are you  
 14 aware of any of those ever being reversed on  
 15 appeal?  
 16 A. I don't remember specifics.  
 17 Q. Is that something -- so there  
 18 might be, there might not be?  
 19 A. Yes.  
 20 Q. You simply have no recollection  
 21 due to the volume of cases?  
 22 A. Yes.  
 23 Q. And can that be searched easily  
 24 through the StarRez system?

322

1 A. Yes.  
 2 Q. In this appeal -- before I get  
 3 into more details with your response I want to  
 4 ask you some other questions about the other  
 5 documents. So the next page or the first page  
 6 is St. Joe's 0583. I'm sorry. That's the  
 7 second page. That appears to be the  
 8 complainant's response to the appeal, correct?  
 9 A. Yes.  
 10 Q. All right. The second response  
 11 is, as we discussed, is yours. It's three  
 12 pages in length, correct?  
 13 A. Yes.  
 14 Q. And then there is a response  
 15 from Emily Forte?  
 16 A. Yes.  
 17 Q. And I think I understand or I  
 18 know the answer, but, still, why is the  
 19 pre-investigative meeting person providing a  
 20 response?  
 21 A. So that determination of the  
 22 ask for the response was made by Dr. White.  
 23 My understanding, as Emily's supervisor and  
 24 director of Community Standards, was that

323

1 there was pieces of the appeal that Emily and  
 2 Emily alone could respond to.  
 3 Q. And then the last one is the  
 4 response of the investigator, correct?  
 5 A. Yes.  
 6 Q. And so I have it as a general  
 7 matter, then, there are not any other  
 8 individuals who would, to your knowledge, be  
 9 asked by a moderator to file a response to an  
 10 appeal? The sanctioning officer, the  
 11 investigator, the pre-investigation meeting,  
 12 and the complainant would comprise, generally  
 13 speaking, all the individuals who might be  
 14 asked to respond?  
 15 MR. PICCERILLI: Can I hear  
 16 that question back, please?  
 17 ---  
 18 (Whereupon, the court reporter  
 19 read back from the record.)  
 20 ---  
 21 MR. PICCERILLI: Objection to  
 22 form.  
 23 THE WITNESS: To my knowledge,  
 24 and my understanding, I am -- but

324

1 keeping in mind I am not in charge of  
 2 the appeal process. So Dr. White  
 3 would be in a better position to  
 4 respond to when there's a request for  
 5 information.  
 6 BY MR. MIRABELLA:  
 7 Q. And can you tell in the StarRez  
 8 system under -- for the investigations under  
 9 the SMP that have -- how many have been  
 10 appealed and how many have not been appealed?  
 11 A. Yes.  
 12 Q. Is the practice of inviting  
 13 responses to the appeal, which is done by the  
 14 assistant vice president -- and if you already  
 15 answered this, I'm sorry -- memorialized  
 16 anywhere or set forth anywhere in the SMP  
 17 policy or elsewhere?  
 18 A. No.  
 19 Q. Do you know what guidance,  
 20 written guidance, if any, the assistant vice  
 21 president -- I'm sorry -- the moderator has  
 22 available to them to determine who should or  
 23 should not be invited to provide a response to  
 24 an appeal?

325

326

1 A. Not that I can answer.  
 2 Q. And is that practice of  
 3 inviting responses to an appeal been in place  
 4 since the institution of the interim sexual  
 5 misconduct policy?  
 6 A. Yes.  
 7 Q. Was that practice in place  
 8 prior to the institution of the sexual  
 9 misconduct policy?  
 10 A. Yes.  
 11 Q. Can you describe a little bit  
 12 how it would have worked prior to the interim  
 13 SMP?  
 14 A. The same way that it works now  
 15 without the investigator. And this is the  
 16 same for appeals that are non-SMP. If a  
 17 student in their appeal submission request  
 18 brings up something about process or something  
 19 about bias or something that only one person,  
 20 the hearing officer, is in the position to  
 21 respond to they are asked to respond. So it  
 22 would be the same, same, minus the  
 23 investigator.  
 24 Q. Prior to the SMP were the

1 students advised that others would have an  
 2 opportunity other than those who were  
 3 identified in the policy to respond to the  
 4 appeal?  
 5 A. No.  
 6 Q. The StarRez system started  
 7 roughly in 2011?  
 8 A. Yes.  
 9 Q. Can you search the system for  
 10 the result of sexual misconduct violations and  
 11 results that go back beyond 2015?  
 12 A. Yes.  
 13 Q. Would that be difficult to  
 14 search?  
 15 A. No.  
 16 Q. Can the system be searched,  
 17 under the StarRez system back to 2011, for  
 18 situations involving assault but not sexual  
 19 misconduct?  
 20 A. Yes.  
 21 Q. Do you know if prior to 2015  
 22 there were ever any findings of sexual  
 23 misconduct responsible against a female  
 24 respondent?

327

328

1 A. I can't off the top of my head  
 2 without referencing documents.  
 3 Q. Is that a cumbersome search to  
 4 undertake?  
 5 A. No.  
 6 Q. Prior to 2015 do you know if  
 7 there were ever any appeals that result -- in  
 8 a sexual misconduct case involving a reversal?  
 9 A. Again, without reference to  
 10 documents I can't answer.  
 11 Q. Are you aware of any criticism  
 12 of the handling of sexual misconduct cases  
 13 prior to the institution -- under the old  
 14 system?  
 15 MR. PICCERILLI: Prior to the  
 16 interim sexual --  
 17 BY MR. MIRABELLA:  
 18 Q. Before 2015.  
 19 A. Yes.  
 20 Q. Okay. Specific ones or just  
 21 generally?  
 22 A. Community Standards is a  
 23 difficult office, many criticize -- there are  
 24 criticisms about our processes.

1 Q. I don't remember if I recall  
 2 this from your testimony or somebody else's.  
 3 Somebody complained about a potential conflict  
 4 of interest with the role of an adviser or a  
 5 hearing officer being an adviser to a student.  
 6 Was that your --  
 7 A. Yes. I shared that last week.  
 8 Q. Mr. Bordak, if the Community  
 9 Standards office gets an anonymous complaint  
 10 of sexual misconduct does it get a StarRez  
 11 number?  
 12 A. Depends on how it's reported.  
 13 Q. Can you explain?  
 14 A. If it's -- basically, if it's  
 15 reported to Dr. Perry as the Title IX  
 16 coordinator exclusively, it may not get a  
 17 StarRez number. It may not be put in our  
 18 system, because there is no grievance  
 19 procedures or disciplinary process to address  
 20 it. If the anonymous complaint goes to an RA  
 21 the RA is compelled to report that through our  
 22 system, which then creates a StarRez number.  
 23 Q. Is there a way for an anonymous  
 24 complaint to be sent directly to the Office of

329

1 Community Standards about sexual misconduct?  
 2 A. Yeah.  
 3 Q. Okay. And if that happens does  
 4 it create a StarRez number?  
 5 A. It would.  
 6 Q. All right. What if the  
 7 anonymous complaint does not identify or the  
 8 respondent cannot be identified in the  
 9 anonymous complaint?  
 10 A. We would still create a report  
 11 without any individuals attached to it by  
 12 name.  
 13 Q. I don't know if you can answer  
 14 this simply or not. When you are entering  
 15 into the database information about Community  
 16 Standards violation complaints, are there  
 17 broad -- any broad categories that the StarRez  
 18 system uses in terms of sexual misconduct,  
 19 alcohol or things of that nature that get  
 20 tagged a certain way?  
 21 A. I don't know -- I don't know  
 22 what you mean.  
 23 Q. I'm not sure I know what I mean  
 24 either. Let me go on to -- I am not sure if I

330

1 can better clarify that question. So when  
 2 you're entering something in the StarRez  
 3 system certain drop-down boxes appear at the  
 4 beginning?  
 5 A. Yes.  
 6 Q. What type of information is  
 7 prompted from the initial -- when you are  
 8 initially entering the data, just so I have a  
 9 better understanding of how it works?  
 10 A. So we have -- I think there is  
 11 three, three or four folders that you  
 12 essentially click and drop down. The sexual  
 13 misconduct policy is in a folder called "All  
 14 Other Violations." The ones that we do  
 15 subcategories for are alcohol, drug, and  
 16 weapon, because we need to identify specific  
 17 crimes for Clery reporting for those  
 18 instances.  
 19 Q. Okay. I asked you earlier  
 20 questions about Jane Roe and other issues  
 21 or -- either complaints or violations or  
 22 claims in Community Standards, correct?  
 23 A. Yes.  
 24 Q. All right. Were you directly

331

1 involved in any of those?  
 2 A. In my role as director I was  
 3 involved in terms of director of the office,  
 4 but I was not directly involved in the  
 5 complaint or process.  
 6 Q. Other than being involved as  
 7 director of the office and -- what office does  
 8 she work in at SJU, Katie Bean's office?  
 9 A. I'm sorry?  
 10 Q. I'm sorry. Jane Roe's office,  
 11 she works for Katie Bean, correct -- or she  
 12 worked in Katie Bean's office?  
 13 A. Correct.  
 14 Q. What is that office called?  
 15 A. Student Outreach and Support.  
 16 Q. And where is that office  
 17 physically located?  
 18 A. In Campion Student Center.  
 19 Q. And Campion Student Center is  
 20 large, correct?  
 21 A. It is.  
 22 Q. Where is your office located?  
 23 A. In 243.  
 24 Q. Of Campion Student Center?

332

1 A. In Campion Student Center.  
 2 Q. Is the Student Outreach office  
 3 in the same floor?  
 4 A. Yes. It's right around the  
 5 corner.  
 6 Q. Did you ever meet or interview  
 7 her or speak with her prior -- let's say  
 8 prior to the -- I don't know if you did with  
 9 Jane Doe, but -- with John Doe -- prior to the  
 10 complaint involving John Doe?  
 11 A. Casually as a worker in the  
 12 office, but there's 20 or so workers in the  
 13 building. And so I knew her as somebody who,  
 14 I would go into the Student Outreach office  
 15 and say, "Is Katie in?" but not any prolonged  
 16 conversation, certainly not anything in-depth.  
 17 Q. Did you ever speak to her  
 18 directly about any of the other Community  
 19 Standards issues that we discussed earlier?  
 20 A. Not that I recall.  
 21 Q. Did you know anything about her  
 22 background or history whatsoever prior to the  
 23 John Doe complaint being filed?  
 24 A. I did.

333

334

1 Q. And how did you come to learn  
2 it?  
3 A. As the director of Community  
4 Standards I am aware of all of the incidents.  
5 Even if I am not directly the administrative  
6 hearing officer for it, it's conduct that's  
7 alleged on campus and so I know about it.  
8 Q. Thank you. I was trying to go  
9 in a different direction with the question.  
10 Did you know anything about her history, as  
11 reported in her deposition already, of either  
12 drug use or an abusive ex-boyfriend, things  
13 that occurred prior to her arrival at SJU,  
14 prior to this complaint being filed in the  
15 John Doe case?  
16 MR. CHESNEY: Object to form.  
17 THE WITNESS: As I recall, I  
18 knew about the substance piece because  
19 that came up through the previous  
20 marijuana matter that we discussed. I  
21 don't know that I knew about the  
22 previous ex-boyfriend. If I did, it  
23 was, like, a fleeting FYI, as sort of  
24 something that happened, but it wasn't

1 something that I recalled.  
2 MR. MIRABELLA: I am going to  
3 follow up, but we need to change the  
4 DVD.  
5 THE VIDEOGRAPHER: This  
6 completes DVD number one of the  
7 recorded deposition of William Bordak  
8 for day two. We are now going off the  
9 record at 10:36.  
10  
11 (Off the record)  
12  
13 THE VIDEOGRAPHER: This is DVD  
14 number two of the recorded deposition  
15 of William Bordak for day two. We are  
16 now on the record at 10:42.  
17 BY MR. MIRABELLA:  
18 Q. So, then, the source of the  
19 information about her substance abuse history  
20 would have been through documentation, not  
21 through an interview or conversations with  
22 her?  
23 A. Yes.  
24 Q. Were any of the sources from

335

336

1 something other than documents, perhaps from  
2 any of your colleagues?  
3 A. Well, it could have been, yes.  
4 Q. Do you know one way or the  
5 other?  
6 A. I don't.  
7 Q. And I didn't mean to suggest  
8 somebody was sharing confidential information  
9 that shouldn't have been. I just meant in the  
10 normal course of your business was there  
11 anybody who might have been communicating with  
12 Community Standards about those issues?  
13 A. Right, and I appreciate the  
14 clarification. It would have been within  
15 educational need to know that I talked with a  
16 colleague about a student who has a  
17 preexisting concern, that now there is a  
18 conduct concern and so it would have just been  
19 out of course, to do what is best for the  
20 student and connect dots and offer resources.  
21 Q. Did you ever -- strike that.  
22 Where does Marci Bermey work?  
23 A. The same office as Katie Bean.  
24 Q. I promise, we will get to your

1 appeal letter in a second. The appeal  
2 decision makers, can you just describe for me  
3 how that group is assembled? I don't mean for  
4 the appeal. I mean, who is eligible, what  
5 training do they have, and what offices do  
6 they work in?  
7 A. The appeal panel is drawn from  
8 a board that exists called the Community  
9 Standards board. It's a dual functioning  
10 board, where they can be a hearing board as  
11 well as an appeal panel. I worked on the  
12 recruitment of those individuals. The faculty  
13 are appointed by faculty senate. The  
14 administrators on the board are appointed by  
15 vice president for student life associate  
16 provost. The student members on the board are  
17 drawn from -- undergraduate student members  
18 are drawn from another board that we have  
19 called the peer review board, which means that  
20 they're well trained in our process, more than  
21 another student might be, and so it's -- and a  
22 graduate student that's selected by myself.  
23 The -- it's an 11-person board.  
24 Q. And is the turnover every year



1 or how does it works?

2 A. Faculty, staff, and  
3 administration are on two-year appointments.  
4 Students are on one-year appointment. Just  
5 with graduation it's easier to have the  
6 students on a yearly term.

7 Q. And when are they trained or  
8 how does the training take place?

9 A. It's ongoing training. We  
10 train at the beginning of every academic year,  
11 so early September, on process, any changes to  
12 the student handbook, any policy revisions  
13 that might have taken place over a summer, and  
14 then there is ongoing training through the  
15 fall semester on other items that would make  
16 them better prepared for their service on the  
17 board.

18 Q. The 11 members that make up the  
19 board, is it always the same categories, like,  
20 two students, two faculty? How did that work?

21 A. Yes. There is always -- there  
22 is always a set number of faculty, set number  
23 of staff administrators, and set number of  
24 students.

1 Q. And what is your understanding  
2 of how they are selected for each appeal?

3 A. There is a general request for  
4 availability. I mean, the primary  
5 consideration is availability and so there is  
6 a first ask for availability and then those  
7 names of the panel members are shared with the  
8 students if the students had any objections to  
9 share.

10 Q. Are the names of the  
11 complainant and respondent shared with the  
12 community board members -- Community Standards  
13 board members?

14 A. Once an appeal panel is  
15 selected, the three to hear the appeal is  
16 selected, the names are shared. The names are  
17 not shared on the initial ask to all 11  
18 members.

19 Q. Is there any reason why the  
20 names are shared once a panel is selected? Is  
21 that to make certain that there is no  
22 conflicts?

23 A. Yes.

24 Q. You talked about the ongoing

1 training. Is there any documentation in your  
2 office that you use to train them with?

3 A. Yes.

4 Q. And can you briefly identify  
5 what's used?

6 A. We use -- kind of the first  
7 step of the training is the policy and so the  
8 policy is a big training document and on the  
9 policy, that flow chart I referenced earlier.  
10 Keeping in mind that this appeal panel would  
11 serve for nonsexual misconduct policy cases as  
12 well, the student handbook serves as a  
13 training document. And for the follow-up  
14 trainings we have materials that are provided  
15 by the Title IX coordinator that serve as more  
16 specific Title IX related considerations.

17 Q. So when you earlier said the  
18 policy, you mean the SMP policy?

19 A. Yes.

20 Q. The flow chart, the policy, the  
21 student handbook. From your office are any  
22 other written materials provided for training?

23 A. We create a PowerPoint from  
24 information within the student handbook and

1 typical training materials.

2 Q. Is there anything in the  
3 PowerPoint that's not from the student  
4 handbook?

5 A. Yes.

6 Q. What types of -- how long is  
7 the PowerPoint?

8 A. It's lengthy. It's meant to be  
9 kind of multipart, we won't get through the  
10 whole PowerPoint during this training kind of  
11 thing. And keeping in mind that the board,  
12 their specific trainings are on appeals and  
13 their specific trainings are on being a  
14 hearing board member. In terms of the appeal,  
15 there is a PowerPoint that basically takes the  
16 appeal process into a PowerPoint. It's easier  
17 to digest, it's easier for us to present the  
18 material, and there might be some other  
19 elements that are not direct from the  
20 handbook.

21 Q. I understand you said it's  
22 lengthy. Are we talking, is it like  
23 the PowerPoint-- in terms of length, 50 pages  
24 or how would it print out?

341

1 A. I would be guessing, but 20, 30  
 2 slides.  
 3 Q. Are any of the slides just  
 4 related to appeal of sexual misconduct cases?  
 5 A. I can't recall with  
 6 specificity.  
 7 Q. Is any section of the  
 8 PowerPoint just related or directed to the  
 9 appeal of sexual misconduct violations?  
 10 A. I can't recall with specificity  
 11 on that.  
 12 Q. All right. Who created the  
 13 PowerPoint teaching tool?  
 14 A. There is a lot of tools. It  
 15 would have been created by me or Dr. Perry or  
 16 Marci Bermey, in Student Outreach and Support  
 17 who had other materials around Title IX  
 18 considerations.  
 19 Q. I know you are not the Title IX  
 20 coordinator, but what is your understanding of  
 21 what documents or types of documents the Title  
 22 IX coordinator would provide to the Community  
 23 Standards board members as it relates to  
 24 sexual misconduct?

342

1 A. I don't recall with specifics.  
 2 Q. Do you know if there are any?  
 3 A. Yeah.  
 4 Q. All right. How difficult would  
 5 it be to identify those documents?  
 6 A. Not difficult.  
 7 Q. All right. Is it reasonable --  
 8 or maybe it isn't, actually. Do you know all  
 9 the members of the Community Standards board ?  
 10 A. Yes.  
 11 Q. Do you know them because they  
 12 are on the Community Standards board or  
 13 because you work at the same university? I am  
 14 trying to get a sense for their interaction  
 15 with your office and your personal knowledge  
 16 of them.  
 17 A. I would say I know them in both  
 18 capacities. It's a small campus. I pride  
 19 myself in getting to know faculty and getting  
 20 to know people outside of my office. So, you  
 21 know, I know them because they're on the  
 22 board, but I also know them because I try to  
 23 get to know people on campus.  
 24 Q. All right. Back to your appeal

343

1 letter -- appeal reply -- excuse me --  
 2 response.  
 3 MR. PICCERILLI: This is  
 4 Bordak-7 again, correct?  
 5 MR. MIRABELLA: I believe so.  
 6 THE WITNESS: Yes.  
 7 BY MR. MIRABELLA:  
 8 Q. I direct your attention to --  
 9 we are on the first page. We are looking  
 10 at -- I am looking under Paragraph 1,  
 11 "Regarding Appeal." Do you see that?  
 12 A. Yes.  
 13 Q. Are there any restrictions or  
 14 limitations on what you can address in your  
 15 appeal reply when you prepare it?  
 16 A. I have to answer the questions.  
 17 I mean, I am responding to the appeal of the  
 18 student and so --  
 19 Q. Sure.  
 20 A. -- that's my limit.  
 21 Q. Correct. So if you had a  
 22 conversation with Dr. Perry and you wanted to  
 23 comment on it, even though it was Dr. Perry's  
 24 words you could comment on that in your

344

1 letter?  
 2 A. I could.  
 3 Q. And in this letter, the second  
 4 sentence under paragraph one, can you read  
 5 that into the record?  
 6 A. "Upon initial review by the  
 7 Title IX coordinator and the director of  
 8 Community Standards it was determined that the  
 9 conduct alleged would constitute a violation  
 10 of the St. Joseph's University sexual  
 11 misconduct policy, policy regarding sexual  
 12 assault, sexual harassment, sexual  
 13 exploitation, domestic violence, dating  
 14 violence, or stalking."  
 15 Q. So am I correct -- and correct  
 16 me if I'm wrong -- you are indicating in that  
 17 sentence in response to the claim that the  
 18 complaint did not fit the definition of sexual  
 19 assault that you believed -- that it was your  
 20 opinion that it did?  
 21 A. Yes.  
 22 Q. And you also were indicating  
 23 that it was the opinion the Title IX  
 24 coordinator, who was Dr. Mary-Elaine Perry,

345

346

1 that it did as well?  
 2 A. Yes.  
 3 Q. And then you go on to also  
 4 indicate that it's the opinion of the  
 5 investigator, correct?  
 6 A. Yes.  
 7 Q. What was your basis for  
 8 concluding that it was the opinion -- never  
 9 mind. I see your basis. You comment on the  
 10 investigator's report, correct?  
 11 A. Yes.  
 12 Q. And I think you already told me  
 13 you didn't have any conversations with  
 14 Ms. Malloy about her investigation in this  
 15 matter, correct?  
 16 A. Right.  
 17 Q. My understanding from Dr.  
 18 Perry's testimony is that as the Title IX  
 19 coordinator she's supposed to stay out of the  
 20 disciplinary process. Is that your  
 21 understanding?  
 22 A. I don't know what -- "stay out  
 23 of" is kind of a loaded --  
 24 Q. Sure.

1 A. Ultimately, she's responsible  
 2 for the university's compliance under Title IX  
 3 and so she does have an interest in ensuring  
 4 the disciplinary process proceeds  
 5 appropriately and so in that sense she is in  
 6 the process, but she's not in the day-to-day  
 7 weeds of the operations of the disciplinary  
 8 process.  
 9 Q. She doesn't serve as a hearing  
 10 coordinator -- I mean of a hearing board  
 11 member, correct?  
 12 A. Right.  
 13 Q. And she doesn't respond to  
 14 appeals, correct?  
 15 A. Right.  
 16 Q. And she doesn't do the  
 17 investigations and didn't do -- strike that.  
 18 She didn't do the investigations under the  
 19 old -- before the SMP, correct?  
 20 A. Correct.  
 21 Q. And am I correct in assuming  
 22 that your reference to Dr. Perry's opinion  
 23 about this was included because you felt it  
 24 was relevant and appropriate to allude to the

347

348

1 Title IX coordinator's opinion about the  
 2 definition?  
 3 A. I do, because in the appeal it  
 4 was raised that, quote, someone in the office  
 5 of Community Standards made that decision and  
 6 so I thought it was appropriate to say that by  
 7 policy it was the Title IX coordinator in  
 8 consultation with Community Standards about  
 9 the process and the complaint.  
 10 Q. And in that same section, next  
 11 paragraph, "The breadth of conduct," do you  
 12 see that?  
 13 A. Yes.  
 14 Q. Can you read that into the  
 15 record? I just want to ask you some questions  
 16 about it.  
 17 A. "The breadth of conduct that is  
 18 prohibited under the policy was discussed  
 19 with," redacted, "during his pre-investigation  
 20 meeting (Appeal Packet, Page 46) on March 6,  
 21 2018."  
 22 Q. And then right beneath that,  
 23 what appears to be -- is that something that  
 24 was embedded from the pre-investigation

1 meeting checklist?  
 2 A. Yes.  
 3 Q. And is that a reference to what  
 4 you're talking about in terms of the breadth  
 5 of the conduct?  
 6 A. Yes.  
 7 Q. And what is the breadth of  
 8 conduct, then, that was referred to?  
 9 A. That sexual misconduct can  
 10 include sexual assault, sexual harassment,  
 11 domestic violence, dating violence, sexual  
 12 exploitation, stalking, retaliation, and  
 13 intimidation.  
 14 Q. Why did you believe it was  
 15 appropriate to investigate this matter as a  
 16 sexual assault and under the sexual misconduct  
 17 policy?  
 18 A. I don't want to mis-cite the  
 19 definitions in the sexual misconduct policy,  
 20 but there is a place regarding nonconsensual  
 21 sexual contact and it was my estimation that  
 22 the complaint as alleged should be  
 23 investigated as potentially nonconsensual  
 24 sexual contact.

349

1 Q. And what about the contact was  
2 sexual, as far as your understanding of it as  
3 alleged?

4 A. It was in the context of a  
5 kissing, sexual encounter. It wasn't -- you  
6 know, the same conduct taken outside of that  
7 kissing would have made it maybe look  
8 differently, but within the context of kissing  
9 I absolutely saw it as potentially conduct  
10 that was nonconsensual sexual contact.

11 Q. Did the complainant indicate  
12 that the squeezing -- that she believed that  
13 squeezing her neck was sexual or sexually  
14 aimed?

15 A. I don't know her specific  
16 language, but as I looked at it and I looked  
17 at it with Dr. Perry and the definitions in  
18 the policy and we determined it to be.

19 Q. There have been Community  
20 Standards violation claims that you and Dr.  
21 Perry didn't agree or had a difficult time  
22 deciding if they should go under the SMP or  
23 not?

24 A. I would -- not that we have

350

1 disagreed on. I would say -- I would change  
2 the word "disagreement" -- or "difficult," I  
3 think you said. Some of these are more  
4 complex and so they require more of a  
5 conversation and looking at the policy  
6 definitions.

7 Q. Is there a general presumption  
8 that if it's a close call it goes under the  
9 SMP?

10 A. Yes, but there also has to be  
11 conduct implicated under the policy. We are  
12 not going to always err on the side of, "Well,  
13 we will send it to an investigation," but it  
14 has to reach a threshold of conduct that could  
15 implicate the policy.

16 Q. If the conclusion in this case  
17 was that the squeezing of the neck was not  
18 part of an intimate or sexual act, would it  
19 have been investigated under the Community  
20 Standards general provisions, outside of the  
21 SMP?

22 A. It's hard to talk in  
23 hypothetical, but if it was outside of a  
24 sexual encounter I don't see it as initiating

351

1 the sexual misconduct policy.

2 Q. I understand. If the  
3 allegation was that they were talking and the  
4 squeezing of the neck occurred but there was  
5 no kissing, what policy or policies might that  
6 have implicated, if any, under the Office of  
7 Community Standards?

8 A. We certainly have policies and  
9 expectations around physical contact, abuse,  
10 threatening, endangering others that it could  
11 be addressed under.

12 Q. Would it still have been sent  
13 to an outside investigator?

14 A. No.

15 Q. Would the -- what's dating  
16 violence?

17 A. I don't -- I'm not going to  
18 misspeak the policy. There's a definition in  
19 the policy I can reference.

20 Q. I guess my question is: Do you  
21 believe that the conduct as alleged had fallen  
22 under the definition of dating violence?

23 A. Again, without looking at the  
24 document -- I don't want to misspeak -- but my

352

1 understanding is dating violence speaks to a  
2 preexisting social relationship that I don't  
3 believe was present in this matter.

4 Q. Directing your attention down  
5 to paragraph two -- oh, I'm sorry. I forgot  
6 to ask you: Are there any limitations on  
7 which members of the Community Standards board  
8 hear appeals involving cases involving sexual  
9 misconduct?

10 A. No.

11 Q. All right. Let's move to the  
12 next page.

13 MR. PICCERILLI: 585?

14 MR. MIRABELLA: Yes. Thank  
15 you.

16 BY MR. MIRABELLA:

17 Q. All right. The first full  
18 paragraph, can you just read that into the  
19 record?

20 A. Yes. Redacted, "expressed in  
21 his appeal that the 'entire process is biased  
22 against the accused and in favor of the  
23 accuser. I was not allowed to know the  
24 details of the claims against me until after I

353

354

1 was convicted ...' The process administered  
 2 was equitable, fundamentally fair, and  
 3 included equal protections for both the  
 4 respondent and complainant."  
 5 Q. What do you mean by the term  
 6 "equitable"?  
 7 A. At every step in the process,  
 8 at every engagement with the one student we  
 9 engaged with the other. Both students were  
 10 invited to a pre-investigation meeting. Both  
 11 students were invited to share with the  
 12 investigator, both in the moment and in the  
 13 time following if they had additional  
 14 information to share. Both students were  
 15 shared the outcome on the same timeline. So  
 16 that equitable and equal protections is – are  
 17 similar.  
 18 Q. Was the respondent told that if  
 19 they want the matter can be referred to law  
 20 enforcement?  
 21 A. Yes.  
 22 Q. So the respondent can say, "I  
 23 don't want to" – "I think this should go to  
 24 the DA's office" or whatever, not just the

1 complainant?  
 2 A. Yes.  
 3 Q. So the complainant in this case  
 4 provided certain evidence in the statement,  
 5 correct?  
 6 A. I can't recall specifically.  
 7 Q. And you have some training  
 8 under Title IX, correct?  
 9 A. Yes.  
 10 Q. And Title IX requires that the  
 11 investigations be equitable, correct?  
 12 A. Yes.  
 13 Q. And Title IX also requires that  
 14 the investigations be fundamentally fair,  
 15 correct?  
 16 A. As I understand it. I am not  
 17 sure the exact language that's used.  
 18 Q. All right. The next paragraph  
 19 says – can you read that into the record?  
 20 A. Yes. "The Office of Community  
 21 Standards does not share the details of the  
 22 complaint with the respondent prior to or  
 23 during the pre-investigation meeting. The  
 24 investigator is better positioned to respond

355

356

1 to points raised by" redacted "in his appeal  
 2 regarding the information shared or not shared  
 3 during the investigation process. I am unable  
 4 to respond to these points."  
 5 Q. And this is an area you and I  
 6 have always discussed earlier in the  
 7 deposition, correct?  
 8 A. Yes.  
 9 Q. I just want to make sure I am  
 10 clear on one thing. Your sentence says the  
 11 Office of Community Standards – it speaks  
 12 about prior to or during the pre-investigation  
 13 meeting that the details are not shared,  
 14 correct?  
 15 A. Correct.  
 16 Q. Is it also correct that the  
 17 details are not shared after the  
 18 pre-investigation meeting and before the  
 19 respondent meets with the investigator?  
 20 A. Not by the Office of Community  
 21 Standards.  
 22 Q. And the only other source of  
 23 sharing of that information, if not from  
 24 Community Standards, would be the

1 investigator, correct?  
 2 A. Yes.  
 3 Q. How long does it take you to  
 4 prepare a reply like this to an appeal?  
 5 A. Couple hours.  
 6 Q. And how long does the appeal  
 7 panel have access to the information they are  
 8 being asked to decide on?  
 9 A. It varies. At least a few  
 10 days.  
 11 Q. Are they provided with, if you  
 12 know, the documentation necessary to review  
 13 for the appeal or is it made available to them  
 14 online?  
 15 A. We use – it's made available  
 16 to them online in a password-protected form,  
 17 given the secure nature of the documents,  
 18 protected nature of the documents. We also  
 19 have a printed copy of the documents available  
 20 during the meeting.  
 21 Q. During the actual meeting, when  
 22 the panel comes together?  
 23 A. Yes.  
 24 Q. You don't serve as a moderator,



357

358

1    though, correct?  
 2        A.     No.  
 3        Q.     Has anyone internally at SJU  
 4    ever expressed concern about the appeal  
 5    responses being done without notice to the  
 6    respondent?  
 7        A.     No.  
 8        Q.     Do you believe that having the  
 9    procedure in place that St. Joe's has for the  
 10   appeal reply, as we have discussed, that the  
 11   moderator invites, in any way interferes with  
 12   an equitable investigation?  
 13       A.     No.  
 14       Q.     Has anyone ever raised or  
 15   talked about changing the process so that the  
 16   respondent would have an opportunity to  
 17   respond to the investigator's initial findings  
 18   before an outcome or a finding of  
 19   responsibility?  
 20           MR. PICCERILLI: Can you repeat  
 21   that, please?  
 22           ---  
 23           (Whereupon, the court reporter  
 24   read back from the record.)

1           ---  
 2           THE WITNESS: Yes.  
 3    BY MR. MIRABELLA:  
 4        Q.     When was that raised and by  
 5    who?  
 6        A.     I recall a privileged  
 7    conversation at the invitation of general  
 8    counsel to discuss the Q&A in fall of 2017.  
 9        Q.     And was anything changed?  
 10       A.     In terms of?  
 11       Q.     To change the process so that  
 12   the respondent would have an opportunity to  
 13   respond to the investigator's report before an  
 14   outcome or before it's considered the  
 15   findings.  
 16       A.     No.  
 17       Q.     Do you know why?  
 18           MR. PICCERILLI: Wait a minute.  
 19           MR. MIRABELLA: Outside of  
 20   what I -- is there an objection to  
 21   privilege?  
 22           MR. PICCERILLI: Yes, there's  
 23   an objection on privilege grounds.  
 24

359

360

1    BY MR. MIRABELLA:  
 2        Q.     Outside of what you may have  
 3    learned through privilege grounds, do you know  
 4    why?  
 5        A.     No.  
 6        Q.     Do you believe that having the  
 7    respondent -- giving the respondent an  
 8    opportunity to reply in writing to the  
 9    investigator's preliminary findings before  
 10   there is an outcome or a finding of  
 11   responsibility would be in any way undermining  
 12   of the process?  
 13       A.     No.  
 14       Q.     Do you believe that it would be  
 15   beneficial for the investigator in coming to  
 16   her findings and conclusions and reaching a  
 17   just outcome?  
 18           MR. PICCERILLI: Read that  
 19   back, please.  
 20           MR. MIRABELLA: Do you want me  
 21   to just rephrase it? It was too long.  
 22   BY MR. MIRABELLA:  
 23        Q.     Do you think it would be a good  
 24   thing --

1           MR. PICCERILLI: Excuse me, if  
 2   I may. If you can just keep your  
 3   voice up a little bit, because  
 4   sometimes it's hard to hear you.  
 5           MR. MIRABELLA: Really?  
 6           MR. PICCERILLI: Yes.  
 7   BY MR. MIRABELLA:  
 8        Q.     That question got kind of long  
 9   and sideways. Let me try it again. Do you  
 10   believe that -- do you believe or have an  
 11   opinion as to whether giving the respondent an  
 12   opportunity to respond to preliminary findings  
 13   before there is an outcome or a finding of  
 14   responsibility would be a good thing for the  
 15   investigative process?  
 16       A.     You know, I am not the  
 17   investigator and so I am hesitant to answer in  
 18   terms of the impact something might have on  
 19   the investigation.  
 20       Q.     The conversation that came up,  
 21   the privileged one, that was before the  
 22   incident with John Doe, correct?  
 23       A.     Yes.  
 24       Q.     And that, I think you

361

362

1 referenced, maybe the Dear Colleague Letter?  
 2 A. Yes.  
 3 Q. I want to go back to -- maybe  
 4 not. Bear with me here. As part of the  
 5 sexual misconduct policy investigation is the  
 6 respondent advised in writing at any point  
 7 that the meeting with the investigator is, in  
 8 fact, the equivalent of a hearing?  
 9 A. We don't use that language, but  
 10 in the explanation of what the investigation  
 11 is we are covering all aspects, that would  
 12 also have been covered in a hearing. We don't  
 13 call it a hearing, but it is through its  
 14 nature a hearing.  
 15 Q. What is your understanding --  
 16 and this is not your direct responsibility,  
 17 just your understanding as the director of  
 18 Community Standards as to why Mr. Anderson  
 19 would -- reviews all the appeals initially, at  
 20 least for sexual misconduct cases?  
 21 A. I can't answer.  
 22 Q. Are you aware that he reviews  
 23 them?  
 24 A. I don't know. Like, truly,

1 once the matter is concluded at Community  
 2 Standards it moves to appeal and I respond  
 3 when asked -- if asked to respond.  
 4 Q. In this instance, respondent  
 5 first was able to get academic -- first was  
 6 able to arrange with his adviser an  
 7 opportunity to see the investigative file  
 8 after the appeal was concluded. Are the  
 9 respondents notified after the fact, after the  
 10 outcome of the appeal that there were other  
 11 individuals who provided responses to the  
 12 appeal?  
 13 A. No.  
 14 Q. Mr. Bordak, have you attended  
 15 any webinars or participated in webinars or  
 16 seminars or presentations by outside groups --  
 17 A. Yes.  
 18 Q. -- or firms --  
 19 MR. PICCERILLI: Hold on a  
 20 second.  
 21 THE WITNESS: I thought he  
 22 paused.  
 23 BY MR. MIRABELLA:  
 24 Q. Fair enough -- involving Title

363

364

1 IX?  
 2 A. Yes.  
 3 Q. All right. Can you identify  
 4 the significant ones? And I don't --  
 5 significance -- I mean the ones that  
 6 involved -- that either you got materials at  
 7 or that you found helpful or maybe you  
 8 traveled to?  
 9 A. Not recently, that I can recall  
 10 with specificity.  
 11 Q. Any in 2018?  
 12 A. In February there was a  
 13 conference that I know I attended. I don't  
 14 know whether they were specific to that. I  
 15 get emails every day from the Association of  
 16 Student Conduct Administration that is kind of  
 17 conversation about it. So it's not that I am  
 18 not ever engaging in learning or research on  
 19 Title IX.  
 20 Q. And your responsibilities in  
 21 the Office of Community Standards are broader  
 22 than Title IX, correct?  
 23 A. Yes.  
 24 Q. Have you ever attended any of

1 the ATIXA presentations?  
 2 A. No.  
 3 Q. Do you have any of the ATIXA  
 4 reference materials or publications in your  
 5 office?  
 6 A. Not that I regularly reference.  
 7 They may be in a binder on the bookshelf  
 8 somewhere that I have gotten over the years.  
 9 So I can't say yes or no.  
 10 Q. Fair enough.  
 11 A. But it's not desk side that I  
 12 reference.  
 13 Q. This came up and didn't get  
 14 fully flushed out. What materials do you have  
 15 in your office about Title IX -- I don't mean  
 16 today, I mean as of April 30 and before of  
 17 2018 -- that you might reference from time to  
 18 time?  
 19 A. Not that I reference. I mean,  
 20 I have a binder and a folder of copies of Dear  
 21 Colleague Letters or resolution agreements  
 22 that were read for informational purposes or a  
 23 privileged setting, but not something that I  
 24 reference regularly.

1 Q. Any other authorities, authors,  
 2 speakers in connection with Title IX that you  
 3 recall being helpful or informative that you  
 4 have used or watched?  
 5 A. Not that I can recall.  
 6 Q. You mentioned you took – one  
 7 of your graduate classes was with Dr.  
 8 Anderson?  
 9 A. Yes.  
 10 Q. And there was some discussion  
 11 of the Title IX in that class?  
 12 A. Yes.  
 13 Q. The class covered more than  
 14 simply Title IX, correct?  
 15 A. Yes.  
 16 Q. I'm sorry. I don't remember  
 17 the answer. Was there any handouts in  
 18 connection with the Title IX materials?  
 19 A. There were not handouts. There  
 20 were electronically available PowerPoints that  
 21 may have had a slide or two on Title IX. I  
 22 can't be certain.  
 23 Q. And what about the coursebook,  
 24 anything on Title IX, if there was a

1 coursebook?  
 2 A. Yes.  
 3 Q. What was the name of the  
 4 coursebook?  
 5 MR. PICCERILLI: I'm sorry.  
 6 What is the – hold on a second. What  
 7 is the question that you're answering,  
 8 whether there was a coursebook or was  
 9 it whether or not there was Title  
 10 IX –  
 11 MR. MIRABELLA: Al, don't  
 12 worry. I'm going to ask him.  
 13 BY MR. MIRABELLA:  
 14 Q. Was there a coursebook?  
 15 A. Yes.  
 16 Q. Did it have anything on Title  
 17 IX?  
 18 A. Yes.  
 19 MR. PICCERILLI: Thank you.  
 20 BY MR. MIRABELLA:  
 21 Q. Can you name the coursebook or  
 22 identify it in some way that will allow me to  
 23 find it?  
 24 A. Yeah. I mean, I still own it.

1 It cost money. I'm keeping it. So I do know  
 2 the name.  
 3 Q. Can you tell me?  
 4 A. No. I could find the name.  
 5 Q. Would you do me a favor and  
 6 provide – would you provide the information  
 7 as to the title of the coursebook to your  
 8 counsel and also the edition or the copyright  
 9 edition, so the fifth or the sixth or  
 10 whatever?  
 11 A. Yes.  
 12 Q. Thank you. Is this appeal  
 13 letter similar in scope – and I understand  
 14 based on your earlier testimony that when you  
 15 do the appeal reply its content's driven by  
 16 issues to implicate your responsibilities in  
 17 the Office of Community Standards, correct?  
 18 A. Yes.  
 19 Q. So the scope of the letter  
 20 would change depending upon what's raised in  
 21 the appeal?  
 22 A. Yes.  
 23 Q. As a general matter, is this  
 24 consistent with the type of letters that you

1 prepare in appeal responses?  
 2 A. Yes.  
 3 Q. Can you just refresh my  
 4 recollection about your testimony? Are there  
 5 ever pre-investigation investigations done in  
 6 connection with complaints involving sexual  
 7 misconduct under the new sexual misconduct  
 8 policy?  
 9 A. Can you repeat that? I don't  
 10 understand your question.  
 11 MR. PICCERILLI: Objection to  
 12 the form.  
 13 BY MR. MIRABELLA:  
 14 Q. You don't understand my  
 15 question? Sure. In a situation where Dr.  
 16 Perry receives a complaint that implicates  
 17 sexual misconduct are there circumstances  
 18 where your office or the office of -- school  
 19 safety office does an investigation prior to  
 20 initiating – prior to referring it out to an  
 21 investigator?  
 22 A. Yes.  
 23 Q. All right. What circumstances  
 24 might prompt that? And I apologize. I think

369

370

1 some of this was covered and I think I know  
2 the answers to some of it.

3 A. In an instance where the  
4 complaint is unclear, because maybe the  
5 complainant shared with not Dr. Perry but with  
6 an RA, and maybe in that moment it's not quite  
7 clear what their complaint is, our public  
8 safety investigator or, frankly, somebody else  
9 in residence life might follow up with a  
10 complainant together or Dr. Perry might follow  
11 up with the complainant to get more  
12 information. We don't really call that an  
13 investigation. It's more of a collection of  
14 information to determine the procedural route  
15 and so in instances where it's not clear and  
16 we would benefit from more information.

17 Q. What if the complainant can't  
18 identify with specificity the respondent? And  
19 I don't mean, like, has no idea. I mean,  
20 like, provides some details, but it can't --  
21 it's not perfectly clear that it involves a  
22 specific respondent that can be identified by  
23 the complainant?

24 A. There are times when we've gone

1 to the outside investigator to investigate  
2 those matters when we were -- when the  
3 complainant was and, thereby, we were  
4 confident that it was likely a student, the  
5 investigator would do that investigation, even  
6 if at the end of the investigation it was  
7 still unable to determine the name or identity  
8 of the respondent.

9 Q. What information is the  
10 investigator entitled to other than what is  
11 provided directly to the investigator by the  
12 witnesses and by your office?

13 A. They are entitled to what they  
14 need and so we really leave it up to them  
15 to -- within the scope of their investigation  
16 if they find something relevant and wanted  
17 that information, they have the ability to  
18 request it, and that could be card swipe  
19 histories on campus. I know they have asked  
20 for a variety of things related, but it's up  
21 to them to determine.

22 Q. To your knowledge, since the  
23 SMP has come into effect, the interim SMP, has  
24 an investigator asked for any surveillance --

371

372

1 not surveillance -- video footage of campus  
2 security?

3 A. I can't recall.

4 Q. What about card swipes?

5 A. I can't recall with  
6 specificity.

7 Q. Since you've been in the Office  
8 of Community Standards do you recall any of  
9 the investigations involving sexual misconduct  
10 implicating security cameras?

11 A. I don't know what you mean by  
12 "implicating security cameras."

13 Q. Somebody wanted to see security  
14 camera footage of the outside of a building.

15 A. I can't recall.

16 Q. Back to some of my earlier  
17 questions. If there was security camera  
18 footage relevant to the investigation that was  
19 requested in a particular investigation, under  
20 the StarRez system could you determine that?

21 A. No.

22 Q. But you believe if you brought  
23 up the whole case you would see that there was  
24 a reference to video footage?

1 A. Yes. If within the  
2 investigative report there was mention of a  
3 video footage, then, yes.

4 Q. But there is no box in the  
5 StarRez system for that type of evidence that  
6 gets checked?

7 A. Right.

8 Q. Is the complainant ever advised  
9 orally that the advisers, any advisers or  
10 support person they engage cannot be a  
11 witness?

12 A. Yes.

13 Q. How is that process handled in  
14 general?

15 A. During the conversation about  
16 the advisers during the pre-investigation  
17 meeting and it's listed in the policy as a  
18 condition of advisers. So during the  
19 conversation about advisers that's touched  
20 upon.

21 Q. What about the -- there is --  
22 what kind -- strike that. Certain individuals  
23 at the school in the Student Outreach Office  
24 have specific training to serve as support

373

374

1 people?  
 2 A. Yes.  
 3 Q. What is that called and what  
 4 type of training do they have, to the extent  
 5 you're familiar with it?  
 6 A. I don't know exactly what they  
 7 are called. My understanding is that the  
 8 Student Outreach and Support trains folks  
 9 across the university as staff members that  
 10 will reach out to students to ensure that we  
 11 are being equitable and that we are providing  
 12 support and resources to both students  
 13 involved and so if somebody is needed to reach  
 14 out to the student, really just to avail  
 15 themselves as a support resource. It's not a  
 16 procedural resource.  
 17 Q. Understood.  
 18 MR. MIRABELLA: Off the record  
 19 for a second.  
 20 THE VIDEOGRAPHER: Off the  
 21 record, 11:23.  
 22 ---  
 23 (Off the record)  
 24 ---

1 THE VIDEOGRAPHER: We are on  
 2 the record, 11:32.  
 3 BY MR. MIRABELLA:  
 4 Q. Mr. Bordak, I am going to hand  
 5 you a couple of pages from the sexual  
 6 misconduct policy. It's SJU1180 and 1181. I  
 7 want to direct your attention to the  
 8 definition of sexual assault, specifically,  
 9 the definition that you were discussing  
 10 involving nonconsensual sexual conduct. I  
 11 think that's Subpart I. Can you look at that  
 12 for a moment? It starts at the bottom of the  
 13 page and goes onto the next page. I am going  
 14 to ask you just to read the first portion from  
 15 the bottom, the ii at the bottom of the first  
 16 page and top of the first page into the  
 17 record, to frame the questions.  
 18 A. The entire paragraph here --  
 19 Q. No.  
 20 A. -- of ii?  
 21 Q. Just start and go a sentence at  
 22 a time. I don't think we need to read the  
 23 whole thing, but you can decide that.  
 24 A. "For purposes of this policy

375

376

1 sexual assault also includes nonconsensual  
 2 sexual contact. Nonconsensual sexual contact  
 3 means any sexual touching with any object by a  
 4 person upon another person without consent or  
 5 forcing any person to touch you or the  
 6 individual in a sexual manner. It is defined  
 7 as engaging in any sexual contact other than  
 8 intercourse with another person without that  
 9 person's consent and/or cognizance. It  
 10 includes any nonconsensual sexual contact,  
 11 including any improper touching of intimate  
 12 body parts. It also includes the  
 13 nonconsensual removal of another's clothing,  
 14 indecent contact, i.e., the unwanted touching  
 15 of intimate body parts, including but not  
 16 limited to genital, buttocks, groin, or  
 17 breasts or causing another to have indecent  
 18 contact with those intimate body parts."  
 19 Q. Can you zero in on the portion  
 20 of the definition that you believe is  
 21 applicable to the allegations of Ms. Roe  
 22 against Mr. Doe?  
 23 A. Where it says "It includes any  
 24 nonconsensual sexual contact, including any

1 improper touching of intimate body parts."  
 2 Q. Was it your belief that the  
 3 touching of Roe's neck was an intimate body  
 4 part?  
 5 A. It was my belief that it was  
 6 enough of a complaint and suggestion that it  
 7 was to go to an investigation for the  
 8 investigator to determine. So I was not  
 9 determining the consensual nature. I was not  
 10 determining the specifics of sexual contact or  
 11 intimate body part. But it was suggested that  
 12 it was in the complaint enough for there to be  
 13 an investigation.  
 14 Q. There was nothing in  
 15 the complaint -- strike that. The complaint  
 16 did indicate that the touching part, not the  
 17 application of the force, but that the  
 18 touching part was consensual, correct?  
 19 A. I don't recall specifically.  
 20 Q. Assume for purposes of moving  
 21 this along that there was no indication that  
 22 it was not consensual that, in fact, the  
 23 investigator found that it was consensual, the  
 24 touching. What part of the complaint did you



377

378

1 feel triggered the sexual misconduct policy?  
 2 I guess, to be fair to you, you said based on  
 3 the complaint, correct?  
 4 A. Yes.  
 5 Q. And the complaint included an  
 6 allegation that John Doe had his hand on Jane  
 7 Roe's neck while they were kissing, correct?  
 8 A. Yes.  
 9 Q. And is that generally the part  
 10 of the complaint you're referring to?  
 11 A. Yes, but without the full  
 12 complaint in front of me I don't know if  
 13 that's exhaustively it.  
 14 Q. The full complaint, you're  
 15 referring to Dr. Perry's complaint that she  
 16 sent to your office?  
 17 A. Yes.  
 18 Q. The initial complaint which is  
 19 Page 3, this is SJU document 0335, and I  
 20 believe that's what you are referring to as  
 21 the initial complaint?  
 22 A. Yes.  
 23 Q. All right. Can you tell me  
 24 what in the initial complaint you relied on to

1 reach your own conclusion that this implicated  
 2 the sexual misconduct policy definition of  
 3 sexual assault?  
 4 A. "They began making out, which  
 5 was fine, then somehow he put his hand on her  
 6 throat and began squeezing her neck."  
 7 Q. And what is that -- how did you  
 8 interpret that under the definition?  
 9 A. I interpreted the making out  
 10 being a context under which sexual contact can  
 11 occur. The definition in the policy says it  
 12 includes but not -- "unwanted touching of  
 13 intimate body parts, including but not limited  
 14 to, genitals, buttocks, groin, or breasts." I  
 15 saw in my read that neck could potentially be  
 16 included as an intimate body part given the  
 17 context of making out in a sexual situation.  
 18 Q. Could the back of somebody's  
 19 shoulder be an intimate body part under  
 20 similar circumstances?  
 21 A. Potentially, yes.  
 22 Q. So if the allegations were that  
 23 Jane Roe had her -- hypothetically, there is  
 24 no allegation -- had her fingernails on the

379

380

1 back of John Doe's shoulder and while they  
 2 were making out applied force and, you know,  
 3 broke skin, that could potentially implicate a  
 4 sexual misconduct violation?  
 5 MR. CHESNEY: Object to form.  
 6 MR. MIRABELLA: There's no  
 7 suggestion that happened here.  
 8 MR. PICCERILLI: Let me object  
 9 to the form too. You can answer.  
 10 THE WITNESS: Yes. Yes. Given  
 11 the facts as you presented, yes.  
 12 BY MR. MIRABELLA:  
 13 Q. All right. Mr. Bordak, I know  
 14 this has come up at some of the depositions,  
 15 but it's still not perfectly clear to me. Who  
 16 was responsible for hiring and overseeing  
 17 Ms. Malloy's involvement in the investigation?  
 18 A. I was not part of the --  
 19 MR. PICCERILLI: Objection.  
 20 BY MR. MIRABELLA:  
 21 Q. At St. Joe's, at SJU.  
 22 MR. PICCERILLI: Overseeing the  
 23 investigation or -- is that what you  
 24 meant to say?

1 MR. MIRABELLA: Want me to  
 2 break it down?  
 3 MR. PICCERILLI: Sure.  
 4 BY MR. MIRABELLA:  
 5 Q. First off, when there has been  
 6 an investigation triggered under the sexual  
 7 misconduct policy who at SJU does Ms. Malloy  
 8 report to?  
 9 A. "Report to" is -- I don't know  
 10 what you mean by "report to." For purposes  
 11 of -- so let me answer this way: For purposes  
 12 of the process and a pending investigation,  
 13 she works directly with me, but I would not  
 14 say that Liz reports to me.  
 15 Q. And if there was an  
 16 interruption or an issue with the completion  
 17 of an investigation who at SJU would take  
 18 responsibility for interfacing with the  
 19 investigator or the investigator's firm?  
 20 A. I don't understand your  
 21 question.  
 22 Q. Sure. If for some reason,  
 23 hypothetically, Ms. Malloy started but didn't  
 24 complete an investigation who at SJU would

381

1 follow up to make certain it got completed?  
 2 A. Potentially me, potentially Dr.  
 3 Perry, as Title IX coordinator.  
 4 Q. Who selected, if you know, at  
 5 SJU Ms. Malloy to perform the investigations?  
 6 A. I do not know who selected.  
 7 Q. Do you know what her  
 8 qualifications are?  
 9 A. I don't. I have a copy of her  
 10 resumé or itemized, but I have no reason to  
 11 doubt her qualifications, as she's been – the  
 12 institution has selected her and supported her  
 13 in the role.  
 14 Q. Were you ever asked to assess  
 15 her qualifications?  
 16 A. No.  
 17 Q. Or review her resumé or CV  
 18 prior to her initiating an investigation?  
 19 A. No.  
 20 Q. Do you know if she's certified  
 21 as a Title IX investigator?  
 22 A. I don't know if that  
 23 certification exists, so no.  
 24 Q. And if it exists, do you know

382

1 if she has it?  
 2 A. No.  
 3 MR. PICCERILLI: Objection.  
 4 BY MR. MIRABELLA:  
 5 Q. Have you ever heard her speak  
 6 or give a presentation?  
 7 A. No.  
 8 Q. Have you met her in person?  
 9 A. Yes.  
 10 Q. And how often and how long have  
 11 you known her?  
 12 A. I have known her since we  
 13 started the investigations. I didn't know her  
 14 prior to. And I see her in person when she  
 15 comes to campus to interview students. She  
 16 stops in our office to get a key to the  
 17 conference room across the hall and often  
 18 stops in and says hello.  
 19 Q. Does she share the progress of  
 20 an investigation with you during the  
 21 investigation?  
 22 A. Timeline, yes, but not any  
 23 depth. She might say, "I anticipate another  
 24 week" and that's helpful for us to just

383

1 anticipate timing.  
 2 Q. All right. And do you know  
 3 what the department or what position, whether  
 4 it be the vice president of student life or  
 5 someone else, who was responsible for  
 6 retaining her firm as the outside  
 7 investigators?  
 8 A. I don't know.  
 9 Q. Do you know if any other firms  
 10 or individuals have been retained – I  
 11 understand Ms. Malloy has changed firms. Let  
 12 me ask that a different way. Are you aware of  
 13 any other – investigators from any other law  
 14 firms performing investigations?  
 15 A. No.  
 16 Q. And have you worked with any of  
 17 the other investigators at her firm?  
 18 A. Yes.  
 19 Q. And do you know who they are?  
 20 A. Yes.  
 21 Q. Can you name them?  
 22 A. Andrew Shapren was an  
 23 investigator, Rose Isard was an investigator,  
 24 and Andrew Rolfes was an investigator.

384

1 Q. And have any of those  
 2 individuals performed investigations in the  
 3 last two years?  
 4 A. Yes.  
 5 Q. Who decides which investigator  
 6 performs which investigation?  
 7 A. Ms. Malloy.  
 8 Q. Is she considered the point  
 9 person at her firm for the outside  
 10 investigators?  
 11 MR. PICCERILLI: Objection.  
 12 BY MR. MIRABELLA:  
 13 Q. Or is there a different title?  
 14 MR. PICCERILLI: Objection.  
 15 BY MR. MIRABELLA:  
 16 Q. Is she the lead investigator,  
 17 that's what I want to know?  
 18 MR. PICCERILLI: Objection.  
 19 THE WITNESS: She is my main  
 20 liaison. So I don't know – I feel  
 21 uncomfortable giving her a title like  
 22 lead or liaison. She's the one who I  
 23 contact and she looks at her  
 24 availability and the availabilities of

385

386

1 other investigators as well as  
 2 conflicts with -- potential conflicts  
 3 with students and makes the  
 4 determination on who will be the  
 5 investigator.  
 6 BY MR. MIRABELLA:  
 7 Q. Have there been any since the  
 8 SMP has taken place conflicts with students  
 9 since -- that you're aware?  
 10 A. Yes.  
 11 Q. Do you know how many times it's  
 12 happened?  
 13 A. There was once.  
 14 Q. Was the conflict that the  
 15 investigator or the student knew each other or  
 16 something else?  
 17 A. The investigator had been an  
 18 investigator in a matter that involved the  
 19 student before. So let me clarify. There may  
 20 have been more than one, as I'm talking.  
 21 Q. I was asking you by memory.  
 22 A. Yeah.  
 23 Q. Sure.  
 24 A. But those have come to our

1 attention, as we have done this for a few  
 2 years, the investigator might know some of the  
 3 parties involved and we have avoided assigning  
 4 them the investigation.  
 5 Q. How did Malloy become familiar  
 6 with and knowledgeable about the SJU  
 7 procedures?  
 8 MR. PICCERILLI: Objection.  
 9 BY MR. MIRABELLA:  
 10 Q. What is your understanding --  
 11 MR. PICCERILLI: Basis.  
 12 BY MR. MIRABELLA:  
 13 Q. What is your understanding of  
 14 how Malloy was introduced to SJU's process?  
 15 A. I don't have an understanding  
 16 or recollection.  
 17 Q. Have you ever served in that  
 18 role?  
 19 A. I have met with Liz on  
 20 occasion, with Dr. Perry, to talk through,  
 21 kind of, the procedures and the policy, but I  
 22 wasn't -- I don't recall being a part of the  
 23 initial training. Again, this is a few years  
 24 ago. I can't remember.

387

388

1 Q. I was going to say. The  
 2 meeting you do remember, when was that, toward  
 3 the beginning of the new process or more  
 4 recently?  
 5 A. So I know we had a meeting in,  
 6 I think, last summer and it was typical, sort  
 7 of "Let's talk about the year." That's the  
 8 last time I recall having quote, unquote  
 9 training conversation.  
 10 Q. Do you recall what subjects  
 11 were covered at that meeting?  
 12 A. I can't recall with specifics.  
 13 Q. Were there any discussions, if  
 14 not specifically generally, about changing the  
 15 process in any way?  
 16 A. Not that I can recall.  
 17 Q. Was Ms. Malloy involved as the  
 18 investigator for the sports team?  
 19 A. Yes.  
 20 Q. That investigation ended up in  
 21 both an SMP model and a Community Standards  
 22 model, correct?  
 23 A. Yes.  
 24 Q. Has that ever happened before?

1 A. Yes.  
 2 Q. How often, do you know?  
 3 A. Not often.  
 4 MR. PICCERILLI: Hold on one  
 5 second. Let's go off the video,  
 6 please.  
 7 THE VIDEOGRAPHER: Off the  
 8 record, 11:44.  
 9 -- --  
 10 (Off the record)  
 11 -- --  
 12 THE VIDEOGRAPHER: We are on  
 13 the record, 11:46.  
 14 BY MR. MIRABELLA:  
 15 Q. Mr. Bordak, was Ms. Malloy the  
 16 investigator in the situation involving one of  
 17 SJU's sports teams?  
 18 A. Yes.  
 19 Q. And I asked you about dual --  
 20 in situations where there was a process under  
 21 the SMP and through Community Standards and  
 22 you said there has been other occasions,  
 23 correct?  
 24 A. Yes.

389

1 Q. Were the other occasions before  
 2 or after -- had to be after the SMP was  
 3 instituted, correct?  
 4 A. Yes.  
 5 Q. And you mentioned at least one  
 6 and you said there could have been others.  
 7 You're not sure?  
 8 A. Yes.  
 9 Q. Can that be checked in the  
 10 StarRez system?  
 11 A. Yes.  
 12 Q. In this instance you were  
 13 directly involved in the Community Standards  
 14 violations investigations?  
 15 A. Yes.  
 16 Q. And what was your involvement?  
 17 I know there has been some testimony. I want  
 18 to try to move this along.  
 19 A. My involvement was the  
 20 administrative hearing officer for the conduct  
 21 that was in the complaint that did not meet  
 22 the definition of conduct prohibited by the  
 23 SMP. So I was not -- we were not looking at  
 24 the same conduct. I was looking at the

1 nonsexual misconduct policy complaints.  
 2 Q. And there was both claims  
 3 asserted -- investigated against the team as a  
 4 whole, correct?  
 5 A. Yes.  
 6 Q. And against at least two  
 7 individuals on the team?  
 8 A. Yes.  
 9 Q. And in that process were the  
 10 two individuals provided with written notice  
 11 of the violations and claims asserted against  
 12 them that were not part of the SMP?  
 13 MR. PICCERILLI: You mean the  
 14 claims were not SMP claims?  
 15 BY MR. MIRABELLA:  
 16 Q. The non-SMP part of the claims  
 17 that fell within your purview.  
 18 A. They were given notice of the  
 19 violations of the code that they are alleged  
 20 to have violated.  
 21 Q. How were they provided that?  
 22 A. In written notice.  
 23 Q. Did that written notice include  
 24 the specific factual allegations?

391

1 A. No.  
 2 Q. Did it include the specific  
 3 provisions of the Community Standards conduct  
 4 code?  
 5 A. Yes.  
 6 Q. Were they advised that they are  
 7 entitled to access to evidence of the  
 8 violation [sic] of those claims against them  
 9 prior to any hearing?  
 10 A. I can't recall specifically,  
 11 but it would have been our process to do that,  
 12 yes.  
 13 Q. And did hearings take place in  
 14 connection with those claims?  
 15 A. Yes.  
 16 Q. Do you know how many?  
 17 A. I don't recall.  
 18 Q. Were you the hearing officer  
 19 for all the hearings?  
 20 A. Yes.  
 21 Q. How are the hearings  
 22 memorialized or documented when they occur?  
 23 A. We don't have a transcript.  
 24 They are not recorded and so the documents and

392

1 the student's file is the memorializing of the  
 2 hearing.  
 3 Q. All right. And is it  
 4 reasonable to conclude there were at least two  
 5 hearings?  
 6 A. Yes.  
 7 Q. And do you know if there was  
 8 any witnesses who provided testimony other  
 9 than the respondents?  
 10 A. As I recall, yes.  
 11 Q. All right. And am I correct  
 12 that, as to the individual students, there was  
 13 a finding of not responsibility for both of  
 14 them?  
 15 A. I can't recall specifics.  
 16 Q. But that can be determined?  
 17 A. Yes.  
 18 Q. And that would be in StarRez?  
 19 A. Yes.  
 20 Q. Do you recall anything about  
 21 the other situation involving a dual process,  
 22 where there was SMP and non-SMP violations?  
 23 A. Yes.  
 24 Q. Without identifying the student

393

1 involved can you describe the specifics or a  
 2 little more about the case?  
 3 A. Yes. There was two matters  
 4 that I recall now. One was a sexual  
 5 misconduct policy complaint by a respondent  
 6 who at the time was banned from campus for a  
 7 previous and pending matter and that  
 8 respondent was under the influence of drugs at  
 9 the time and so we addressed — I addressed  
 10 the drug policy and the violation of that ban  
 11 separate from the sexual misconduct complaint  
 12 that was investigated.  
 13 Q. That's after 2015, or January?  
 14 A. Yes.  
 15 Q. Was that — with respect to the  
 16 allegations, that person for the non-SMP  
 17 violations received a Notice of Process  
 18 Letter, right?  
 19 A. Yes.  
 20 Q. Were the specific code  
 21 violations described or identified in the  
 22 letter?  
 23 A. The violations were listed.  
 24 Q. Were any of the factual

394

1 allegations listed?  
 2 A. No.  
 3 Q. And the same question, was that  
 4 individual advised or would have been advised  
 5 that they were entitled to see the specific  
 6 evidence against them prior to any  
 7 administrative hearing?  
 8 A. Yes.  
 9 Q. Do you know if that individual,  
 10 in fact, did review the evidence?  
 11 A. I don't recall that he did.  
 12 Q. In those situations where the  
 13 student does review the evidence prior to a  
 14 hearing, how is that arranged and what's the  
 15 process for it?  
 16 A. They can contact Community  
 17 Standards and we can schedule a time for them  
 18 to review the documents.  
 19 Q. Are the same limitations —  
 20 similar limitations placed on them in terms  
 21 of, can they copy the documents?  
 22 A. No.  
 23 Q. Can they photograph the  
 24 documents?

395

1 A. No.  
 2 Q. Can they take notes of their  
 3 review?  
 4 A. Yes.  
 5 Q. And can their adviser, if they  
 6 have one, see those documents?  
 7 A. No.  
 8 Q. Is anyone else entitled to see  
 9 those documents besides the complainant and  
 10 the respondent in that situation?  
 11 A. And university staff who have a  
 12 need to see them, no.  
 13 Q. It seemed as though, based on  
 14 the documentation produced, that Ms. Malloy's  
 15 investigation of the sports team athletes was  
 16 done individually, as separate investigations.  
 17 Was your investigation done the same way,  
 18 separately, or was your matter handled under  
 19 the non-SMP, separately or collectively?  
 20 A. Separate hearings, but,  
 21 obviously, a simultaneous collection of  
 22 information, right, because a conversation  
 23 with one was about the same complaint as  
 24 others and so they were separate matters.

396

1 Q. Is there any advantage to  
 2 whether they're channeled separately or  
 3 collectively to the institution in terms of  
 4 being thorough?  
 5 A. Well, for the students. The  
 6 students have their own individual processes.  
 7 It's inappropriate to lump students together  
 8 in the same hearing at the same time.  
 9 Q. All right. There was slide  
 10 shows presented to the students at the  
 11 beginning of the year that you're aware of  
 12 about sexual misconduct, through your office  
 13 or in conjunction with your office?  
 14 A. So beginning of the year — we  
 15 do something in the summer during orientation.  
 16 Is that what you're referencing?  
 17 Q. Yes.  
 18 A. Okay. I just wanted to be  
 19 clear. Yes, I'm aware.  
 20 Q. And the slide show talks about,  
 21 amongst other things, the definition of sexual  
 22 assault, correct?  
 23 A. As I recall, yes.  
 24 Q. Have you changed that or is the



397

398

1 slide show still being utilized?  
 2 MR. PICCERILLI: Changed from  
 3 when?  
 4 MR. MIRABELLA: From when  
 5 Mr. Doe would have seen it.  
 6 THE WITNESS: I don't know. I  
 7 am not responsible for that.  
 8 BY MR. MIRABELLA:  
 9 Q. This past year did you see it  
 10 when it was presented?  
 11 A. This summer?  
 12 Q. Yes.  
 13 A. No.  
 14 Q. Did you see it -- have you ever  
 15 seen it presented?  
 16 A. This summer?  
 17 Q. No, or prior summers.  
 18 A. Prior summers, yes.  
 19 Q. Is it your belief that claims  
 20 of sexual assault or sexual misconduct,  
 21 generally speaking, are underreported?  
 22 A. It is.  
 23 Q. Is it your belief that that  
 24 holds true on the SJU campus as well?

1 A. I have no reason to think that  
 2 a national trend wouldn't also speak to our  
 3 campus, no.  
 4 Q. So, as to generally, you don't  
 5 dispute it, but you don't believe that  
 6 necessarily holds true on SJU's campus?  
 7 A. I do think it holds true on our  
 8 campus. I have no reason to think that the  
 9 national trend would be different on our  
 10 campus.  
 11 Q. Did you have any involvement in  
 12 the grant application?  
 13 MR. PICCERILLI: Which grant  
 14 are we referring to?  
 15 MR. MIRABELLA: The \$300,000  
 16 grant.  
 17 THE WITNESS: I was not part of  
 18 the writing group. I provided  
 19 information when requested by that  
 20 writing group specific to Community  
 21 Standards.  
 22 BY MR. MIRABELLA:  
 23 Q. Is there any way under the  
 24 StarRez system to determine whether the

399

400

1 complainant or respondent holds any special  
 2 student leadership positions?  
 3 A. Not all leadership positions.  
 4 We only record select positions within our  
 5 system.  
 6 Q. Which ones are the ones that  
 7 are recorded?  
 8 A. We record athletes and we  
 9 record Greek life, because we want to be able  
 10 to engage those campus partners should  
 11 something come up with those students. But we  
 12 don't -- it's not used as a warehouse for  
 13 involvements across campus, so I wouldn't be  
 14 able to --  
 15 Q. How does one fall in or outside  
 16 the athlete category, for example, if they are  
 17 on an athletic team?  
 18 A. Right.  
 19 Q. What about -- what are the  
 20 student orientation leaders referred to? Are  
 21 they red shirts or something?  
 22 A. Red shirts.  
 23 Q. Is that information noted in  
 24 the StarRez system?

1 A. It is, yes.  
 2 Q. How is it input?  
 3 A. Manual.  
 4 Q. So you could run a query as to  
 5 whether a complainant or respondent was a red  
 6 shirt?  
 7 A. Yes.  
 8 Q. What is a red shirt?  
 9 A. Orientation leaders. They are  
 10 students who facilitate small groups, lead  
 11 small groups during our summer orientation  
 12 program.  
 13 Q. And has that input information  
 14 been the case since the StarRez system  
 15 started?  
 16 A. I can't answer that.  
 17 Q. But it is as far as your  
 18 familiarity with it and use of it in the past  
 19 years, yes?  
 20 A. Yes.  
 21 Q. All right. I want to ask you  
 22 very briefly, because we are tight on time,  
 23 about the Q&A that came out along with the  
 24 Dear Colleague Letter in 2017.

401

1 MR. MIRABELLA: Let's go off  
 2 the video.  
 3 THE VIDEOGRAPHER: Off the  
 4 video, 11:57.  
 5  
 6 (Whereupon, Exhibits Bordak-8  
 7 and Bordak-9 were marked for purposes  
 8 of identification.)  
 9  
 10 THE VIDEOGRAPHER: We are on  
 11 the record, 11:58.  
 12 BY MR. MIRABELLA:  
 13 Q. Mr. Bordak, I want to ask you  
 14 some questions about the Dear Colleague Letter  
 15 issued in 2017 marked as Exhibit-8 or -- I'm  
 16 sorry -- 9 and then the question and answers  
 17 is 8. Let me indicate to you that -- we are a  
 18 little pressed for time -- and I see that the  
 19 Q&A has writing on it on Page 4. If counsel  
 20 objects, we can try to find a clean one, but I  
 21 can put on the record right now that you have  
 22 not written on it, you have not circled it or  
 23 underlined it, and I would like to proceed  
 24 with the questioning.

402

1 MR. PICCERILLI: I have no  
 2 problem with that.  
 3 BY MR. MIRABELLA:  
 4 Q. And, just to keep things clear  
 5 for the record and for the exhibits, I will  
 6 not ask you to write on this document. So we  
 7 can say right now that any of the handwritten  
 8 lines or anything else were not yours,  
 9 correct?  
 10 A. Yes.  
 11 Q. All right. Other than in the  
 12 meeting with counsel, did you have any  
 13 independent knowledge of the issuance of the  
 14 Dear Colleague Letter which is Exhibit-9 when  
 15 it came out in 2017?  
 16 A. Yes.  
 17 Q. How were you familiar with it  
 18 and what is your understanding of its purpose?  
 19 A. So when it came out, I am on  
 20 the email listservs and distribution lists and  
 21 professional associations that, of course,  
 22 shared "This is pending" and "This has been  
 23 released" and my recollection is shortly  
 24 thereafter general counsel called a privileged

403

1 meeting to discuss. My understanding, even  
 2 separate from that privileged conversation, is  
 3 that these are guidance documents, not meant  
 4 to replace or purport to be law, but documents  
 5 that institutions can look at for guidance.  
 6 Q. All right. I am going to  
 7 direct -- did, in fact, you review Exhibit-9,  
 8 the Dear Colleague Letter, when it came out?  
 9 A. I did.  
 10 Q. Is there anything in the letter  
 11 that stood out to you as being consistent with  
 12 your understanding of what would constitute a  
 13 fair and equitable investigation?  
 14 A. No.  
 15 Q. Let's go to the Q&As, which is  
 16 Exhibit-8, specifically, Question 6, "What  
 17 constitutes an equitable investigation?" the  
 18 bottom of Page 3. Do you see that?  
 19 A. Yes.  
 20 Q. I am going to ask you some  
 21 questions about information in the document.  
 22 I am going to try to do it in a way that makes  
 23 it easy for you to answer or disagree or  
 24 agree. So the body of Page 4 is the answer

404

1 section to what is posed on Page 3, "What  
 2 constitutes an equitable investigation?" I am  
 3 going to direct your attention to the fourth  
 4 full paragraph. Do you see that?  
 5 A. Yes.  
 6 Q. All right. And it talks about  
 7 a number of things. Let me ask you, do you  
 8 agree that "For an investigation to be  
 9 equitable the school should provide written  
 10 notice to the responding party of the  
 11 allegations constituting a potential violation  
 12 of the school sexual misconduct policy,  
 13 including sufficient details and with  
 14 sufficient time to prepare a response before  
 15 any initial interview"? Did I read it  
 16 correctly?  
 17 A. You did. What was the start of  
 18 your sentence?  
 19 Q. Sure. Do you agree that in an  
 20 equitable investigation a school should  
 21 provide written notice and then the remainder  
 22 of the sentence?  
 23 A. I think it's possible to  
 24 provide an equitable investigation without

405

1 sharing the specifics of the conduct on the  
 2 onset.  
 3 Q. Sure. Did St. Joe's provide  
 4 John Doe written notice of the allegations  
 5 constituting a potential violation of the  
 6 school's misconduct policy and including  
 7 sufficient details and with sufficient time to  
 8 prepare a response before any initial  
 9 interview?  
 10 A. Yes.  
 11 Q. What was that written notice?  
 12 A. So, I provided in the  
 13 pre-investigation notice a piece that was –  
 14 there was conduct that was alleged to have  
 15 taken place that would fall under the sexual  
 16 misconduct policy and that is an allegation  
 17 constituting a potential violation. There is  
 18 enough details there that the complainant's  
 19 name is on there, the time, the location, so  
 20 the respondent knows what matter we are  
 21 talking about. And the sufficient time to  
 22 prepare, the investigation isn't right away,  
 23 there is a time between the pre-investigation  
 24 notice and the investigation.

406

1 Q. The written notice is the  
 2 Notice of Process Letter?  
 3 A. The written notice is, yes.  
 4 Q. The Notice of Process Letter?  
 5 A. Yes.  
 6 Q. All right. And is it your  
 7 belief and position that it includes  
 8 sufficient details with sufficient time to the  
 9 respondent to prepare a response before an  
 10 initial interview?  
 11 A. At that point in the process,  
 12 yes. We do not provide exhaustive accounts of  
 13 what's being complained, so as not to  
 14 compromise the investigation. So at that  
 15 point our written notice is, in my estimation  
 16 and in my view, does include sufficient  
 17 details with a sufficient amount of time to  
 18 prepare.  
 19 Q. Now, the next sentence defines  
 20 and it expands on what is sufficient details  
 21 in the Q&A. It says, "Sufficient details  
 22 include the identities of the parties" – and  
 23 that's in your notice letter, correct?  
 24 A. Yes.

407

1 Q. – "the specific section of the  
 2 code of conduct allegedly violated" – that's  
 3 not in your letter, correct?  
 4 A. I disagree. It is.  
 5 Q. I'm sorry. Where is it in your  
 6 letter, the specific –  
 7 A. The specific code is the  
 8 violation of the sexual misconduct policy.  
 9 That is a code. So if we were to send a  
 10 letter that says, "You're in violation of the  
 11 Community Standards" that would not be a  
 12 specific code.  
 13 Q. I'm sorry. So the specific  
 14 section of the code you believe is adequately  
 15 captured by the information in your notice  
 16 letter, correct?  
 17 A. Yes, the section of the code of  
 18 conduct is, the sexual misconduct policy, as  
 19 opposed to the alcohol policy or the drug  
 20 policy or littering. Right. We specifically  
 21 say the section of the code of conduct being  
 22 the sexual misconduct policy.  
 23 Q. I thought the sexual misconduct  
 24 policy was its own policy with subdivisions?

408

1 A. The section of – the code of  
 2 conduct includes many policies, one of which  
 3 is the sexual misconduct policy. So the  
 4 section of the code of conduct is the sexual  
 5 misconduct policy.  
 6 Q. All right. The 50 or so page  
 7 policy you talked about earlier?  
 8 A. Is the section of the code of  
 9 conduct. The code of conduct includes all of  
 10 our policies.  
 11 Q. It goes on in the Q&A to say,  
 12 "The precise conduct allegedly constituting  
 13 the potential violation." Was that included  
 14 in your notice letter?  
 15 A. No.  
 16 Q. Is that included in the  
 17 pre-investigation meeting checklist letter?  
 18 A. No.  
 19 Q. Is that ever provided in  
 20 writing to the respondent?  
 21 A. No.  
 22 Q. Date and location of the  
 23 incident, that's in the notice letter,  
 24 correct?

409

1 A. Yes.  
 2 Q. It goes on to state, "The  
 3 investigation" — and I am skipping a few  
 4 sentences, so follow with me, a few sentences  
 5 down. "The investigation should result in a  
 6 written report summarizing the relevant  
 7 exculpatory and inculpatory evidence" and then  
 8 it says, "The reporting and responding parties  
 9 and appropriate officials must have timely and  
 10 equal access to any information that will be  
 11 used during the informal and disciplinary  
 12 meetings and hearings." Do you see that?  
 13 A. Yes.  
 14 Q. Do you believe the school  
 15 accomplished that here?  
 16 A. Yes.  
 17 Q. All right. Now, the next page  
 18 it says, "What procedures" — on Question 8 —  
 19 "should a school follow to adjudicate a  
 20 finding of responsibility for sexual  
 21 misconduct?" Do you see that?  
 22 A. Yes.  
 23 Q. And do you see the answer  
 24 section?

410

1 A. Yes.  
 2 Q. I'm going to direct your  
 3 attention to the second paragraph. Can you  
 4 read that into the record?  
 5 A. "The decision makers must offer  
 6 each party the same meaningful access to any  
 7 information that will be used during informal  
 8 or formal disciplinary meetings and hearings,  
 9 including the investigation report."  
 10 Q. All right. Was that done here?  
 11 A. Meaningful access to the  
 12 information that will be used, yes.  
 13 Q. Were they provided access to  
 14 the investigation report before —  
 15 A. No.  
 16 Q. They were not?  
 17 A. No.  
 18 Q. And then it says, the next  
 19 sentence, "The parties should have an  
 20 opportunity to respond to the report in  
 21 writing in advance of the decision of  
 22 responsibility or," I guess, "in advance to a  
 23 live hearing to decide responsibility." Was  
 24 that done here?

411

1 A. No. And this is a guidance —  
 2 I feel strongly that we were compliance with  
 3 our obligations under Title IX. This is a  
 4 guidance document and when this came out I  
 5 recall that there were no changes that were  
 6 needed to our policy to be -- to remain in  
 7 compliance. And, in fact, the investigative  
 8 model is supported in these documents as  
 9 something that is an appropriate model.  
 10 Q. In all due respect, not the  
 11 investigative model that's used by SJU.  
 12 A. I disagree with --  
 13 Q. In fact, it's normally known to  
 14 investigators and normally the respondent has  
 15 an opportunity, as does the complainant, to  
 16 see preliminary findings and respond in  
 17 writing and they don't in your case, correct?  
 18 MR. PICCERILLI: Hold on for a  
 19 second. Hold on. I am going to  
 20 object to that. That wasn't a  
 21 question. That was a speech. I am  
 22 objecting to any questions that you —  
 23 any answers that you may have given, I  
 24 ask that they be stricken.

412

1 MR. MIRABELLA: All right. I  
 2 object to any motion to strike any  
 3 part of the answer.  
 4 BY MR. MIRABELLA:  
 5 Q. Was John Doe ever given the  
 6 photographs that were provided to Malloy prior  
 7 to meeting with Malloy?  
 8 A. No.  
 9 Q. Was John Doe ever given the  
 10 complaint that Perry prepared in response to  
 11 her interview with Roe prior to meeting with  
 12 Malloy?  
 13 A. No.  
 14 Q. Was John Doe ever given any  
 15 text messages or information that Roe provided  
 16 to Malloy when she met with her, before  
 17 meeting with Malloy?  
 18 A. No.  
 19 Q. So that's all information that  
 20 Roe had access to that Doe did not have access  
 21 to at the time of his meeting with Malloy,  
 22 correct?  
 23 A. I mean, I can't recall all of  
 24 those questions prior to. If they all came

413

1 from Roe, then yes. If they -- that would  
 2 stand to reason they came from Roe.  
 3 Q. Then Doe did not have access to  
 4 them prior to his meeting with Malloy?  
 5 A. Prior to?  
 6 Q. Correct.  
 7 A. Yes.  
 8 Q. And there is nothing in  
 9 Malloy's findings to indicate that she shared  
 10 any of that evidence or documentation with  
 11 Doe, correct?  
 12 MR. PICCERILLI: Objection to  
 13 form.  
 14 THE WITNESS: Again, I don't --  
 15 even though we just looked at, like, I  
 16 did read -- I didn't read through for  
 17 specificity.  
 18 BY MR. MIRABELLA:  
 19 Q. How about this, if she doesn't  
 20 say she showed it to him, would you agree,  
 21 then, that there is no evidence in writing  
 22 that she showed it to him?  
 23 MR. PICCERILLI: Objection.  
 24 Calls for speculation.

414

1 BY MR. MIRABELLA:  
 2 Q. All right. Well, go back to  
 3 the exhibit. Take a look and let me know if  
 4 there is any indication that Malloy shared any  
 5 of that information, that specific information  
 6 with Doe.  
 7 A. Well, it's not in the  
 8 investigative report, but I can't speak to --  
 9 it would be speculative if it happened outside  
 10 of that report. So I can't answer whether or  
 11 not she shared specific information, yes or  
 12 no.  
 13 Q. Didn't you read her appeal  
 14 review?  
 15 A. I am not her. So my only  
 16 estimations would be based on the information  
 17 that she provided. So even if I reference her  
 18 appeal review I would be saying, "In her  
 19 appeal review she says this."  
 20 MR. MIRABELLA: All right.  
 21 Let's go off the video. I think we're  
 22 about done. I just want to take a  
 23 look at my notes.  
 24 THE VIDEOGRAPHER: Off the

415

1 record, 12:09.  
 2 -- --  
 3 (Off the record)  
 4 -- --  
 5 THE VIDEOGRAPHER: On the  
 6 record, 12:12.  
 7 BY MR. MIRABELLA:  
 8 Q. Mr. Bordak, what resources and  
 9 who do you consult with to determine the  
 10 appropriate sanctions?  
 11 A. I consult with my supervisor in  
 12 terms of -- ultimately, it's the sanctioning  
 13 officer's decision on the sanction, but there  
 14 is value in verbally processing a situation  
 15 and so I have at times talked with my  
 16 supervisor about those sanctions. I've shared  
 17 those sanctions with the Title IX coordinator,  
 18 but it's not to seek permission or  
 19 endorsement. Really, it's to say "Here's what  
 20 the sanctions are," yeah.  
 21 Q. In this instance the finding  
 22 was responsibility for sexual assault, but the  
 23 sanction -- one of the sanctions and the  
 24 principal sanction was probation, not

416

1 separation from the school, correct?  
 2 A. Yes.  
 3 Q. What was your reasoning behind  
 4 that?  
 5 A. There were elements of the  
 6 investigative report that was -- I treated --  
 7 so we have factors in sanctioning that are  
 8 outlined within the policy and one of those  
 9 factors and, actually, the predominant factor  
 10 is egregiousness of the violation. And so  
 11 there were pieces of the investigative report  
 12 that mitigated that egregiousness for me, one  
 13 of which that I do recall specifically was  
 14 mention of the intention, that it was not the  
 15 intention of the respondent to engage in the  
 16 conduct or have the bruising resulting. And  
 17 so that was really important for me. We are  
 18 not trying to ruin lives. We are not trying  
 19 to remove students from our campus community.  
 20 What we are doing is holding students  
 21 accountable for our shared expectations, our  
 22 policies, and if we can do that and hold  
 23 students accountable without separating from  
 24 the campus that's -- that's what we did here.

417

418

1 Q. Was it your finding as part of  
2 the sanctioning process that there was no  
3 intention to commit the act or something else?

4 A. There is a specific line  
5 that -- I am not recalling the specific  
6 wording -- within the investigative report,  
7 where Ms. Malloy did indicate intention -- or  
8 lack of intention and so I did treat that as a  
9 mitigating factor of the egregiousness, that  
10 what could have been a separation from the  
11 university was not.

12 Q. You said there's factors in the  
13 policy?

14 A. Yes.

15 Q. What policy?

16 A. In the sexual misconduct  
17 policy.

18 Q. Is there any other policy that  
19 you consulted with in connection with the  
20 sanctioning?

21 A. No.

22 Q. Or any other policy at the  
23 school that exists that people could consult  
24 with in terms of sanctioning?

1 A. No.

2 Q. Do you recall speaking to Doe's  
3 mother on telephone?

4 A. Yes.

5 Q. Do you recall how you described  
6 the incident to her?

7 A. I don't.

8 Q. Did you ever use the word -- do  
9 you know if you used the term "rough kissing"?

10 A. I don't recall.

11 Q. Did you believe that what  
12 occurred here was rough kissing?

13 A. I don't know how I would  
14 categorize it.

15 Q. How many times -- you spoke to  
16 Roe's [sic] mother at least once?

17 A. Roe's mother?

18 Q. I'm sorry. Doe's mother. My  
19 apology.

20 A. Doe's mother once, at least  
21 once, correct.

22 Q. And do you remember anything  
23 about the conversation?

24 A. Not with specificity. I do

419

420

1 recall -- the purpose of the conversation was  
2 a confirmation of parental notification.

3 Q. Who called who, though? I'm  
4 sorry. I interrupted your answer.

5 A. As I recall, it was a bit of  
6 phone tag over the course of an afternoon and  
7 I recall calling Doe's mother later that  
8 evening from home after work to ensure that  
9 there was notice that night.

10 Q. So she may have called you  
11 during the day, but you are not certain?

12 A. No, she did. And it was phone  
13 tag. It was left messages.

14 Q. And you don't know if you would  
15 have described the incident to Doe's mother as  
16 very rough kissing or rough kissing?

17 A. I don't recall the specific  
18 language used.

19 Q. So you may have, you may not  
20 have? You just don't remember?

21 A. Yes.

22 Q. Did you ever raise your voice  
23 to Doe's mother?

24 A. No.

1 Q. Was the conversation polite and  
2 respectful --

3 A. I think so.

4 Q. -- on both ends?

5 A. I think so. I understood.

6 There was a frustration with me not being able  
7 to share specific information and me not being  
8 able to share the documents with Doe's mother.  
9 And so I would consider it respectful on both  
10 sides, but there was a palpable kind of  
11 tension around the outcome.

12 Q. And do you recall any other  
13 communications either with Doe or with Doe's  
14 mother about the case or the investigation?  
15 I'm sorry. I just brought in Doe. Let me ask  
16 you the question. I withdraw that question.

17 MR. PICCERILLI: You may.  
18 BY MR. MIRABELLA:

19 Q. When you -- you were present at  
20 the outcome hearing, correct?

21 A. Yes.

22 Q. All right. And what did you  
23 advise Doe as to the implications of the  
24 sanctions?



421

1 MR. PICCERILLI: I just want to  
 2 object to the form of the question. I  
 3 don't know that it's an outcome  
 4 hearing as such.  
 5 MR. MIRABELLA: Objection  
 6 accepted.  
 7 THE WITNESS: I don't recall  
 8 specifically. We would have gone over  
 9 the outcome letter from start to  
 10 finish and provided an opportunity for  
 11 Doe to review the investigative  
 12 report. I don't recall specific  
 13 conversations. But, again, we would  
 14 have gone over each piece of that  
 15 outcome letter, including the  
 16 sanctions.  
 17 BY MR. MIRABELLA:  
 18 Q. Did Doe ask about his  
 19 eligibility -- continuing eligibility to go  
 20 with his class to Ireland?  
 21 A. I don't recall.  
 22 Q. So he may have, he may not  
 23 have? You just don't remember?  
 24 A. Correct.

422

1 Q. If it came up, do you know what  
 2 you might have -- what the school's policy was  
 3 that you might have informed him of?  
 4 MR. PICCERILLI: Objection.  
 5 THE WITNESS: I would have  
 6 advised him that the Center for  
 7 National Programs would be the office  
 8 to contact if he had concerns about  
 9 his traveling, that that was not a  
 10 decision that I made.  
 11 BY MR. MIRABELLA:  
 12 Q. Were you involved in that  
 13 decision?  
 14 A. Insofar as sharing the change  
 15 in status with International Programs, yes.  
 16 Q. And just briefly, what was the  
 17 change in status?  
 18 A. From not on disciplinary  
 19 probation to on disciplinary probation.  
 20 Q. When that information was  
 21 conveyed a disciplinary report involving  
 22 drinking was also provided to that office,  
 23 correct?  
 24 A. It was a full disclosure of

423

1 history.  
 2 Q. Why was that relevant at that  
 3 time?  
 4 A. We do a full disclosure of the  
 5 history because of the status change with the  
 6 student.  
 7 Q. But if he's not on probation --  
 8 if that had been the only disciplinary issue  
 9 in his record he would not -- he was not on  
 10 probation when this happened, correct?  
 11 A. Correct.  
 12 Q. And so would that have affected  
 13 his eligibility to go on the trip?  
 14 A. I felt like the full disclosure  
 15 was within an educational need to know to the  
 16 director of the Center for National Programs.  
 17 Q. Did you have an opinion or a  
 18 feeling as to whether or not you believed, as  
 19 the director of Community Standards, it was  
 20 appropriate for him to go or not go on the  
 21 trip?  
 22 A. I don't have an opinion on this  
 23 matter, on that.  
 24 Q. So that office would have made

424

1 the decision and you would have been fine with  
 2 whatever decision they made?  
 3 A. Yes.  
 4 MR. MIRABELLA: No further  
 5 questions.  
 6 MR. CHESNEY: One  
 7 clarification. I believe in your last  
 8 questions you may have said "Roe" and  
 9 not "Doe" one or two times. I just  
 10 want to make sure, were all the  
 11 questions you made about Doe -- I  
 12 think you said Roe's mother, at least  
 13 at one point.  
 14 MR. MIRABELLA: Thank you for  
 15 mentioning that.  
 16 BY MR. MIRABELLA:  
 17 Q. Mr. Bordak, I asked you a  
 18 series of questions about the end of the  
 19 process involving Doe's mother, Doe himself,  
 20 and related questions. If I inadvertently  
 21 said "Roe," I meant "Doe" and I think you  
 22 understood that to be the case as well, right?  
 23 A. Yes.  
 24 MR. CHESNEY: I just wanted to

425

426

1 be clear. Thank you.  
 2 MR. PICCERILLI: Perfectly fine  
 3 by me.  
 4 MR. MIRABELLA: Then we are  
 5 going to attach as exhibits the –  
 6 whatever the next sequential numbers  
 7 are. The definition section of the  
 8 sexual misconduct policy involving  
 9 nonconsensual sexual contact will be  
 10 the next exhibit and then the final  
 11 exhibit will be the – I believe  
 12 that's the Roe – the Perry  
 13 documentation of the Roe complaint and  
 14 that's SJU, so we are clear on the  
 15 record, 0335.  
 16 MR. PICCERILLI: I think -- are  
 17 we on the video record? I think we  
 18 should go off the video record.  
 19 THE VIDEOGRAPHER: This  
 20 completes the videotape deposition of  
 21 William Bordak. We are now going off  
 22 the record at 12:20.  
 23 ---  
 24 (Off the video record)

1  
 2 MR. MIRABELLA: We were just  
 3 identifying some of the documents that  
 4 were used and we are going to mark  
 5 them as exhibits. Exhibit-2, which  
 6 was used, it's the Division of Student  
 7 Life Summary Report, 2016 and '17.  
 8 Instead of attaching the entire  
 9 document we are just going to attach  
 10 as an exhibit the cover page and Page  
 11 4 of that document as an exhibit.  
 12 With respect to the definition of  
 13 sexual assault contained in the SJU  
 14 sexual misconduct policy, that's  
 15 SJU001180, that was referenced, and  
 16 1181, it's going to be attached as  
 17 Bordak-10. And the report prepared by  
 18 Dr. Perry from Roe is going to be  
 19 Bordak-11 and that's SJU0335. I think  
 20 that's it.  
 21 MR. PICCERILLI: Agreed.  
 22 ---  
 23 (Whereupon, Exhibits Bordak-10  
 24 and Bordak-11 were marked for purposes

427

428

1 of identification.)  
 2 ---  
 3 (Deposition concluded. Time  
 4 noted, 12:21 p.m.)  
 5 ---  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

1 CERTIFICATE  
 2 ---  
 3  
 4  
 5 I do hereby certify that I am a  
 6 Notary Public in good standing, that  
 7 the aforesaid testimony was taken  
 8 before me, pursuant to notice, at the  
 9 time and place indicated; that said  
 10 deponent was by me duly sworn to tell  
 11 the truth, the whole truth, and  
 12 nothing but the truth; that the  
 13 testimony of said deponent was  
 14 correctly recorded in machine  
 15 shorthand by me and thereafter  
 16 transcribed under my supervision with  
 17 computer-aided transcription; that the  
 18 deposition is a true and correct  
 19 record of the testimony given by the  
 20 witness; and that I am neither of  
 21 counsel nor kin to any party in said  
 22 action, nor interested in the outcome  
 23 thereof.  
 24 WITNESS my hand and official  
 seal this day of July 2018.  
 <%signature%>  
 \_\_\_\_\_  
 Kimberly A. Wornczyk  
 Notary Public

429

430

1 ---  
 2 INSTRUCTIONS TO WITNESS  
 3 ---  
 4  
 5 Please read your deposition over  
 6 carefully and make any necessary corrections.  
 7 You should state the reason in the appropriate  
 8 space on the errata sheet for any corrections  
 9 that are made.  
 10 After doing so, please sign the  
 11 errata sheet and date it.  
 12 You are signing same subject to the  
 13 changes you have noted on the errata sheet,  
 14 which will be attached to your deposition.  
 15 It is imperative that you return the  
 16 original errata sheet to the deposing attorney  
 17 within thirty (30) days of receipt of the  
 18 deposition transcript by you. If you fail to  
 19 do so, the deposition transcript may be deemed  
 20 to be accurate and may be used in court.  
 21  
 22  
 23  
 24

1 ERRATA  
 2 ---  
 3 PAGE LINE CHANGE  
 4  
 5 Reason for  
 6 Change: ---  
 7  
 8 Reason for  
 9 Change: ---  
 10  
 11 Reason for  
 12 Change: ---  
 13  
 14 Reason for  
 15 Change: ---  
 16  
 17 Reason for  
 18 Change: ---  
 19  
 20 Reason for  
 21 Change: ---  
 22  
 23 Reason for  
 24 Change: ---

431

1 ---  
 2 ACKNOWLEDGMENT OF DEPONENT  
 3 ---  
 4 I, WILLIAM BORDAK, do hereby certify  
 5 that I have read the foregoing pages 217 to  
 6 427 and that the same is a correct  
 7 transcription of the answers given by me to  
 8 the questions therein propounded, except for  
 9 the corrections or changes in form or  
 10 substance, if any, noted on the attached  
 11 Errata Sheet.  
 12 -----  
 13 DATE  
 14 SIGNATURE  
 15  
 16 Subscribed and sworn to  
 17 before me this \_\_\_\_\_ day of \_\_\_\_\_  
 18 \_\_\_\_, 20\_\_.  
 19  
 20 My commission expires:  
 21 -----  
 22  
 23 -----  
 24 Notary Public